

## **POLICY STATEMENT (26.1; 26.3; 26.21; 26.23)**

The New Hampshire Department of Transportation (NHDOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 Code of Federal Regulations (CFR) Part 26. As a primary recipient of Federal funds, the NHDOT has submitted Title VI Assurances to affirm its compliance with Federal regulations.

It is the policy of the NHDOT to ensure that DBEs, as defined in 49 CFR § 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR § 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Chief of Labor Compliance has been designated as the NHDOT's DBE Liaison Officer. The DBE Liaison Officer is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the NHDOT in its financial assistance agreements with the USDOT.

The NHDOT has disseminated this policy statement to the Commissioner, Directors and all the components of our organization; DBE and non-DBE businesses that perform work for NHDOT on USDOT-assisted contracts. The NHDOT DBE Program will be mailed to all requesting agencies or individuals and made available through the NHDOT website. <http://webster.state.nh.us/USDOT/humanresources/dbe/about.htm>.

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Carol A. Murray, Commissioner

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Date

# New Hampshire Department of Transportation Disadvantaged Business Enterprise Program

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## **1. INTRODUCTION**

On February 2, 1999, the USDOT, issued a final rule on the participation of DBE firms in USDOT Programs. These final rules appear as 49 Code of Federal Regulations § 26.

The NHDOT recognizes its responsibility to ensure that DBEs have equal opportunity to participate in the performance of USDOT-assisted contracts and subcontracts administered by the Department.

### **1.1 Definition of Terms (26.5)**

The meanings of the terms used in this program are defined in 49 CFR § 26.5. See Attachment 1. Specific references to 49 CFR § 26 are indicated by the paragraph in parenthesis.

### **1.2 Nondiscrimination (26.7)**

The NHDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR § 26 on the basis of race, color, sex, or national origin.

In administering this DBE Program, the NHDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

### **1.3 DBE Program Updates (26.21)**

The NHDOT will provide the USDOT with updates for approval, as necessary, to reflect significant changes in the program.

The NHDOT will continue to carry out this program until all funds from the USDOT financial assistance have been expended.

### **1.4 Quotas (26.43)**

The NHDOT does not use quotas in any way in the administration of this Program. The NHDOT may use set aside contracts for DBEs on USDOT-assisted contracts in limited and

extreme circumstances when no other method could be reasonably expected to redress egregious instances of discrimination.

## **2. REQUIRED CONTRACT PROVISIONS**

### **2.1 Non Discrimination Assurances (26.13)**

Each financial assistance agreement the NHDOT signs with a USDOT operating administration (or a primary recipient) will include the following assurance:

*The NHDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR § 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The NHDOT's DBE program, as required by 49 CFR § 26, and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the NHDOT of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC. 3801 et seq.).*

Each contract signed by the NHDOT with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

*The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR § 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NHDOT deems appropriate.*

## **2.2 Prompt Payment (26.29)**

The NHDOT has established the following Prompt Payment Specification and is included in every USDOT-assisted contract:

*Within 21 days of the issuance of progress payments, the Contractor shall pay, in full, all subcontractors and suppliers for the value of satisfactorily completed work and materials placed under the contract and for materials in accordance with 109.07 or 109.08 paid for in the progress payments. If the Contractor withholds any portion of payment from a subcontractor, the Contractor shall, within the same timeframe, demonstrate to and obtain acknowledgement from the NHDOT Compliance Review Officer that the Contractor has reasonable cause that the subcontractor failed to satisfactorily complete work, or portions thereof; or that the supplier failed to provide materials as specified above. When the Contractor is found in noncompliance with this specification, sanctions will be imposed as determined by the Department.*

*For purposes of this Section, satisfactorily completed means:*

*The subcontractor has fulfilled the contract requirements of the Prime Contractor including the submission of all documentation required by the Specifications and the subcontract.*

The DBE Staff will coordinate with the appropriate Department personnel responsible for the project to verify timely payments to DBE and non-DBE subcontractors. The Compliance Review Officer, in collaboration with the Bureau of Construction, is responsible for verifying that all subcontractor payments are being made in a timely manner on USDOT-assisted contracts.

If a prime contractor is identified as having potentially violated this section, the Compliance Review Officer will gather facts and determine whether the contractor has violated the prompt payment specifications described above. The Compliance Review Officer's determination will be forwarded to the appropriate District Engineer who will to determine appropriate compliance measures to be taken. These measures may include contract sanctions as described in the NHDOT's Contractor Compliance Procedures.

## **3. ADMINISTRATION OF THE PROGRAM**

### **3.1 Objectives (26.1)**

It is the policy of the NHDOT to ensure that DBEs, as defined in 49 CFR § 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR § 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
6. To assist in the development of firms that can compete successfully in the market place outside the DBE Program.

### **3.2 DBE Liaison Officer, DBELO (26.25)**

The DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the NHDOT complies with all provisions of 49 CFR § 26. The DBELO has direct, independent access to the NHDOT Commissioner concerning DBE Program matters.

The DBELO has assigned one professional on a full time basis as the DBE Coordinator. The NHDOT organizational chart that displays the DBELO's position in the organization is located in Attachment 2 of this program.

Duties and responsibilities of the DBELO include, but are not limited to:

1. Providing directions and guidance to the DBE Coordinator, and the supportive services consultant on implementing all aspects of the NHDOT's DBE Program.
2. Reviewing the DBE Goal methodology and overall DBE annual goals.
3. Advising the NHDOT Commissioner and Directors on DBE matters and achievements.
4. Consulting with the legal counsel and Director of Project Development to determine contractor compliance with good faith efforts.
5. Consulting with Prime Contractor and department personnel to resolve DBE contract performance problems.
6. Ensuring, when required, that prime contractors and consultants have documented their efforts to solicit quotes from certified DBEs on Federally-assisted contracts.



7. Overseeing the DBE certification and recertification process.
8. Attending meetings and seminars having apparent benefit or impact on the DBE program.
9. Planning and participate in DBE training seminars.
10. Ensuring the dissemination of information to promote the DBE Program.

### **3.3 DBE Coordinator**

The DBE Coordinator is responsible for administering the day-to-day operation of the DBE Program. His duties and responsibilities include but are not limited to:

1. Recruit firms to participate in the DBE Program.
2. Certify DBEs according to the criteria set by the USDOT.
3. Maintain and distribute the NHDOT's DBE Directory.
4. Gather and report statistical data and other information as required by the USDOT.
5. Provide outreach to DBEs and community organizations to advise them of opportunities.
6. Set overall DBE annual goals according to the DBELO's guidance.
7. Conduct on-site reviews and make recommendation on certification applications.
8. Identify contracts and procurements so that DBE goals are included in solicitations and monitors results.
9. Participate in home office EEO compliance reviews of contractors.
10. Plan and participate in DBE training seminars.
11. Manage supportive services program.
12. Promote the DBE Program through presentations to DBEs, community based organizations, and other federal agencies.
13. Update the DBE website.
14. Report to the DBELO of any DBE matters and achievements.

### **3.4 DBE Directory (26.31)**

In order to assist contractors/consultants in the selection of DBE firms, the NHDOT compiles and maintains a directory identifying all companies certified as DBEs. The directory lists each company's name, contact person, address, phone number, fax number, e-mail address, company's web site, disadvantaged classification, and the products and services for which the company has been certified to perform.

The NHDOT revises and updates the DBE Directory on a monthly basis and it is posted on the NHDOT website, [www.NHDOT.com](http://www.NHDOT.com). A hard copy of the DBE Directory will be mailed semi-annually to NHDOT active prime contractors, active prime consultants, DBEs, Regional Planning Commissions and other sub-recipients.

To promote the program, the DBE Coordinator solicits interest from prospective small businesses that may qualify as DBEs by conducting:

- Outreach through presentations given to community-based organizations, ethnic and minority groups statewide, and
- Reciprocal certification of DBEs that may provide services in underrepresented areas.

The NHDOT DBE Directory is located in Attachment 3 of this document.

### **3.5 Financial Institution (26.27)**

The NHDOT encourages prime contractors to make use of banks and lending institutions owned and controlled by minorities and women. The state of New Hampshire currently has no minority or women-owned banks. The NHDOT will continue to monitor the availability of minority and women-owned banks.

If through our investigation, minority and/or women owned banks are found, the NHDOT shall, by letter, inform minority and women owned financial institutions of the provisions contained in CFR 49 § 26, relative to opportunities for their use in transportation-related projects. The NHDOT shall request that minority and women-owned financial institutions provide the department with documents outlining the extent of the services offered by such institutions. The NHDOT shall disseminate information of the services offered by these institutions to the construction industry. This task will be accomplished in part as a function of the DBE Supportive Services contract and made available through the NHDOT Web site.

### **3.6 Overconcentration (26.33)**

Pursuant to 49 CFR § 26.33, if the NHDOT determines that DBE firms are so over concentrated in one or more types of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, it will devise appropriate measures to address this over-concentration. These measures may include;

- Technical assistance
- Business development

- Any other measures designed to assist DBEs in performing in other types of work.

To date, the NHDOT has not identified any conditions indicative of overconcentration.

#### **4. DBE CERTIFICATION PROCESS (26.61-26.91)**

The NHDOT will use the certification standards of Subpart D of § 26 and the certification procedures of Subpart E of § 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The NHDOT will make timely certification decisions based on the facts as a whole.

##### **4.1 Social Disadvantage (26.67)**

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control.

The NHDOT rebuttably presumes that citizens of the US (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially disadvantaged individuals.

Individuals who are not presumed to be socially disadvantaged and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to the NHDOT, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E to § 26-Individual Determinations of Social and Economic Disadvantage).

##### **4.2 Economic Disadvantage (26.67)**

Each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) must demonstrate that he or she has a personal net worth that does not exceed \$750,000. This statement must be signed and notarized and takes the following into consideration:

1. - Excludes an individual's ownership interest in the applicant's firm;
2. - Excludes the individual's equity in his or her primary residence;
3. - Does not use a contingent liability to reduce and individual's net worth.
4. - Pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax interest penalties that would accrue if the asset were distributed at the present time.

### **4.3 Determinations of Ownership (26.69)**

In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

- a. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals
- b. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interest, as demonstrated by the substance, not merely the form, or arrangements.
- c. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons.
- d. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial.

### **4.4 Determinations Concerning Control (26.71)**

In determining whether socially and economically disadvantaged owners control a firm, the NHDOT will consider all the facts in the record, viewed as a whole.

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In addition, a DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners,

conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This does not preclude a spousal co-signature on documents as provided for in 49 CFR § 26.69(j)(2).

The socially and economically disadvantaged owners of a firm must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. The following general rules apply:

- (1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
- (2) In a corporation, disadvantaged owners must control the board of directors.
- (3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors provided they do not possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations provided such delegations of authority are revocable, and the socially and economically disadvantaged owners retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners must be such that the NHDOT can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. However, they are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and

policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential.

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members. If the NHDOT cannot determine that the socially and economically disadvantaged owners -- as distinct from the family as a whole -- control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to NHDOT, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether its socially and economically disadvantaged owners control a firm, NHDOT may consider whether the firm owns equipment necessary to perform its work. However, lack of equipment ownership will not serve as a sole basis for determining that the socially and economically disadvantaged individual does not control the firm.

NHDOT will only grant certification to a firm for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate to NHDOT only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work.

#### **4.5 Unified Certification Program, UCP (26.81)**

The NHDOT has identified all USDOT recipients and sub recipients within the State of New Hampshire. These participating agencies, through agreement, recognize the NHDOT as having the “sole” authority to make certification decisions on their behalf. Furthermore, participating agencies shall utilize the statewide Unified Directory published by the NHDOT and shall acknowledge only those firms identified therein as certified DBEs. A Unified DBE Directory is published and distributed to participating agencies semi-annually. The NHDOT DBE Liaison Officer serves as the UCP Manager.

The UCP Agreement is attached to this document. See Attachment 4.

#### **4.6 Application Procedure for Certification (26.83)**

##### **4.61 Forms**

The NHDOT uniform certification application form and documentation requirements are found in Attachment 5 of this program. For information about the certification process or to apply for certification, companies may go to [www.NHDOT.com](http://www.NHDOT.com) or contact:

|                        |                       |
|------------------------|-----------------------|
| DBE Coordinator        | Phone: (603) 271-6612 |
| P.O. Box 483           | Fax: (603) 271-8817   |
| 7 Hazen Drive          |                       |
| Concord, NH 03302-0483 |                       |

#### 4.62 Certification Assistance by the DBE Coordinator

Completed forms and documentation are submitted to the DBE coordinator for review. If clarification or additional information is required, the DBE Coordinator will contact the applicant firm. When necessary, the DBE Coordinator will assist the applicant through this process.

#### 4.63 On-Site Evaluation

The purpose of the on-site evaluation is to verify all information submitted with the original application to confirm the applicant's status regarding eligibility standards, specifically regarding ownership and control.

The DBE Coordinator will meet with the applicant firm on the arranged date at the applicant's place of business to observe operations, interview owners, and review additional documentation, where necessary, to confirm the degree of participation in management, policymaking, and daily operations that the disadvantage owner exercises over the company.

#### 4.64 Certification Review

After the on-site evaluation, the DBELO and the DBE Coordinator evaluate supporting documentation against established eligibility criteria. After examination of all relevant information viewed as a whole, the certification may be:

- withheld for additional information, or:
- approved, or:
- denied. See Section 4.8.

### **4.7 Recertification (26.83)**

The NHDOT will notify DBEs, by certified mail, of the obligation of submitting the "No Change Affidavit" on their anniversary date of original certification. The NHDOT will request the following documentation in order to confirm a DBE's eligibility status:



The NHDOT requires DBEs to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 49 CFR § 26.83(j). The text of this affidavit is the following:

*I hereby affirm that (name of DBE firm) is a disadvantaged/woman-owned business. I further affirm that no changes in ownership, control, size or disadvantaged status as required of 49 CFR § 26 have occurred since this firm's latest certification in the State of New Hampshire. If there has been a change, I further affirm that the proper documentation is on record with the certifying agent. (Name of DBE firm) meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years does not exceed the SBA size standards as defined by North American Industrial Classification System (NAICS).*

All currently certified DBE firms will be notified of these obligations when they receive the *Annual No Change Affidavit*, which is mailed to every DBE prior to their certification expiration date.

The NHDOT also requires all DBEs to inform us, by providing a written affidavit, of any change in its size, disadvantaged status, ownership, or control in accordance with 49 CFR § 26, or of any material changes in the information provided with their firm's application for certification. Each request for recertification will be accompanied by a ***Certification of Disadvantage and Statement of Personal Net Worth*** (see Attachment 6). In addition, each recertifying DBE will be required to remit a copy of its most recent federal tax return, and DBE firms with a home office outside of New Hampshire will be required to submit a copy of their current home state certification letter.

#### **4.8 Denials and Reapplication Procedures (26.86)**

When the NHDOT denies a request for certification, the NHDOT will provide the firm with a written explanation of the reasons for the denial, specifically referring the evidence in the record that supports each reason for the denial. The NHDOT will establish a time period of 6 months before the firm may reply to the recipient for certification. Appeals may be submitted in accordance with paragraph 4.81 on the following page.

#### 4.81 Certification Appeals (26.89; 26.91)

Any firm, which believes that it has been wrongfully denied certification as a DBE with the NHDOT may file an appeal to USDOT no later than 90 days after the date of denial of certification. During the appeal process, the firm shall remain ineligible for consideration as a disadvantaged business with respect to NHDOT's DBE Program until and unless the USDOT finds that the firm is eligible as outlined in 49 CFR § 26.

At all stages of the certification process, the prospective DBE shall have the burden of proving that it is a qualified DBE.

Firms that have been denied of the DBE Certification or recertification, should submit appeals in writing to the U.S. Department of Transportation within 90 days from the date of denial. All appeals should be submitted to:

US Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
400 7th St., SW, Room 2104  
Washington, DC 20590

The NHDOT will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for our USDOT-assisted contracting.

#### 4.9 Decertification (26.87)

A certified DBE may be decertified for any of the following reasons:

- The business has changed to the extent that it is no longer owned or controlled by the disadvantaged person(s),
- The DBE does not submit information as required for recertification or does not respond to the request for recertification.
- The DBE is no longer an on-going business entity.
- The DBE has been decertified as a Section 8(a) by the U.S. Small Business Administration and has not been otherwise certified by the NHDOT. Please note, all Section 8(a)-certified firms must annually establish that their firm remains 8(a) eligible.

- DBE falsifies a sworn statement.
- DBE violates the DBE Program or 49 CFR § 26.
- DBE fails to notify the DBE Office, within thirty (30) days of change in the ownership, control management, independence, address or location change, or status as an on-going concern.
- A DBE recertification review determines the firm no longer meets eligibility standards.

The DBE Coordinator, should one of the above situations arise, will perform an investigation of the facts surrounding the issue and make a determination. If the *facts and findings* contained in the investigative report warrant decertification, the DBE Coordinator will notify the firm in writing that the NHDOT is considering whether or not to decertify the firm, and a copy of the investigative report, or portions thereof to be used as a basis for decertification, will be provided to the firm. The firm will have 30 days to respond in writing as to why decertification should not occur. Once the deadline for response has past, the NHDOT will review any additional information and render a decision. A decision to decertify will become effective after 30 days from the date of notice. The DBE has the right to request a hearing before the NHDOT's Hearing Officer. Any request for a hearing submitted after 30 days from the date of notice will be considered as untimely, and may be denied.

Once the Department is notified of an appeal the Department's Hearing Officer will schedule an informal hearing, to be recorded by a court reporter, or allow the firm the opportunity to present their arguments in writing. Upon completion of this process, the Hearing Officer will communicate the determination in writing to both the appealing firm and the DBE Coordinator. DBEs will remain eligible to participate as a DBE during the hearing process, regardless of the firm's perceived status. All NHDOT final certification decisions will take effect immediately. Any individual or firm which has been denied DBE certification or has been decertified by the NHDOT shall not be permitted to reapply for certification for a period up to 12 months.

## **5. OVERALL GOAL (26.45)**

### **5.1 Process**

The NHDOT will submit its overall goal to the USDOT on August 1<sup>st</sup> of each year. Before establishing the overall goal, the NHDOT will solicit input from DBEs, general contractor groups, community and minority organizations, and other Federal and State officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses.

The following is a list of some of the organizations the NHDOT will contact:

- The Associated General Contractors,
- New Hampshire Commission on the Status of Women,
- The New Hampshire Health and Human Services/Economic Services,
- The International Institute of New Hampshire multi-cultural Center for Refugees,
- The National Association for the Advancement of Colored People,
- The New Hampshire Department of Education/Sex Equity,
- The New Hampshire Job Training Council, and
- The Veterans Administration.

By June 15<sup>th</sup> annually, the NHDOT will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Labor Compliance Office in the John O. Morton Building, Concord, NH. The proposed goal will be available for public review and comment for a period of 30 days following the date of the notice. The NHDOT will publish the notice in the only statewide newspaper: *The Manchester Union Leader*.

Our overall goal submission to the USDOT will include a summary of information and comments received, if available, during this public participation process and our responses.

The NHDOT will begin implementing our overall goal on October 1<sup>st</sup> of each year, unless otherwise directed by the USDOT.

## **5.2 Methodology of Attainment**

### **5.21 Amount of Goal FY 2004 – FHWA Funded Projects.**

The NHDOT intends to expend 7.75% of the amounts received under the Transportation Equity Act for the 21st Century or any subsequently enacted Federal laws, with small business concerns owned and controlled by socially and economically disadvantaged individuals. It is the intent of NHDOT that this expenditure be obtained (to the extent practicable), through a race and gender neutral program.

### 5.21.1 Overall Goal

In accordance with USDOT guidelines, the NHDOT will determine the DBE Program overall goal for each fiscal year.

### 5.21.2 Method of Attainment

The NHDOT will calculate the overall goal using the criteria based in 49 CFR § 26.45. The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on Federally assisted contracts, and reflect a level of participation expected in the absence of discrimination. The overall goal setting procedure is based on the following:

#### Step 1: Base Figure

In determining the DBE goal for FY 2004, NHDOT identified all subcontractors (DBE and non-DBE) that provided bids or quotes to active prime contractors pursuant to any advertised Federal-aid project during the 2002 calendar year.

NHDOT further determined the number of all businesses that have bid or quoted on Federally-assisted contracts as prime contractors. With this information, NHDOT was able to determine the availability of ready, willing and able DBE's relative to all businesses ready, willing and able to participate on Federally-assisted contracts. The table below identifies the base figure or "Total Percentage" of participation expected based on the relative availability of DBEs.

|                                      |              |
|--------------------------------------|--------------|
| All business that have bid or quoted | 320          |
| DBE's that have bid or quoted        | 29           |
| <b>Total Percentage</b>              | <b>9.06%</b> |

After considering the following adjustment bases, the NHDOT determined a **final goal of 7.75%** for FY 2004.

#### Step 2: Adjustment to Base Figure

Current Capacity to Perform Work - The NHDOT considered previous dollar amounts of Federally-assisted projects awarded to prime contractors relative to dollar amounts of prime and subcontracts awarded to DBE's. The FY 2000 goal attainment was 10.42%, FY 2001 goal

attainment was 6.96%, and FY 2002 goal attainment was 24.6%. Thus the historical capacity, averaged for the past three years, was 13.99%.

Distribution of dollar amounts among DBEs in FY 2002. Of the total of the Federal Money contracted to DBEs in 2000, 2001, and 2002, 41% was awarded to Beck & Bellucci, a DBE certified in NH. This company has graduated from the program and is no longer a DBE. The high participation rate attained in these years demonstrates that the program was dependent upon one prime contractor and its ability to obtain work. This participation does not reflect the real situation of the program. At this time, participating DBEs do not have the capacity to perform items of work necessary to fill this void.

Expected participation in 2004. Among the 29 DBEs who provided bids or quotes in 2002, nine of them accounted for the 75% of the total quotes. This percentage indicates that 25% of DBEs identified as *ready and willing* (defined by the submission of one bid or quote) do not demonstrate a comparable level of activity as those companies that contributed to overall goal attainment.

#### 5.21.3 Breakout of Estimated Race-Neutral and Race-Conscious Participation

The NHDOT estimates that, in meeting our overall goal of 7.75 %, NHDOT will obtain 5.75% from race-neutral participation and 2 % through race-conscious measures.

### 5.22 Amount of Goal FY 2004 – FAA Funded Projects

#### 5.22.1 Overall Goal

NHDOT, through its Division of Aeronautics, intends to expend 3.5% of the amounts received from Federal financial assistance on DOT-assisted contracts with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent that this expenditure is obtained to the extent practicable, through a race and gender-neutral program (see 49 CFR § 26.5 for definitions).

#### 5.22.2 Method of Attainment

NHDOT will calculate the overall goal using the criteria based in 49 CFR § 26.45. The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on Federally assisted contracts, and reflect a level NHDOT would

expect in the absence of discrimination. The overall goal setting procedure is based on the following:

**Service Area:** The DBE goal for monies received by the Division of Aeronautics was established using guidelines published in the Federal Register by first determining the service areas and then calculating the DBE goal from that area. The service area was determined to be New Hampshire, Vermont, and Maine.

**Data Sources:** The DBE goal was found by determining the number of businesses listed by the US Census Bureau in the County Business Pattern and filtered for firms in construction in North American Industry Classification System (NAICS) 23, Subsection 234110 (Highway & Street Construction); this number becomes the denominator. Due to the type of work anticipated to bid in the next fiscal year, the Department does not anticipate utilizing any other NAICS codes in computing their formula. The numerator was found by determining the number of current ready, willing and able businesses that are DBEs on file with the State of New Hampshire.

$$\begin{array}{l} \text{Formula:} \quad \text{DBE (8)} \\ \text{-----} = 3.5\% \\ \text{CBP (227)} \end{array}$$

### 5.22.3 Breakout of Estimated Race-Neutral and Race-Conscious Participation

NHDOT estimates that, in meeting our overall goal of 3.5 %, the Division of Aeronautics will obtain 2.0% from race-neutral participation and 1.5% through race-conscious measures.

## 5.23 Amount of Goal FY 2004 – Rail and Transit Funded Projects

### 5.23.1 Overall Goal

NHDOT, through its Bureau of Rail and Transit, intends to expend 2% of the amounts received from Federal financial assistance on DOT-assisted contracts for Sections 5309, 5311, and 5313 with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent that this expenditure be obtained to the extent practicable, through a race and gender neutral program (see 49 CFR § 26.5 for definitions).

### 5.23.2 Method of Attainment

NHDOT will calculate the overall goal using the criteria based in 49 CFR § 26.45. The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on Federally assisted contracts, and reflect a level NHDOT would expect in the absence of discrimination. The overall goal setting procedure is based on the following:

#### Step 1: Base Figure

**Service Area:** The DBE goal for monies received by the Bureau of Rail and Transit was established using guidelines published in the Federal Register by first determining the service areas and then calculating the DBE goal from that area. The service area was determined to be Statewide.

**Data Sources:** The DBE goal was found by determining the number of businesses listed by the US Census Bureau in the County Business Pattern and filtered for firms in the North American Industry Classification System (NAICS) Subsectors

- 453 - Miscellaneous Store Retailers
- 323 - Printing and Related Support Activities
- 812 - Personal and Laundry Services
- NHDOT Active Consultant List (excluding civil engineering).

These numbers become the denominator. The numerator was found by determining the number of current ready, willing and able businesses that are DBEs on file with the State of New Hampshire.

|  |  |
|--|--|
| <p>Formula (5311) DBE (5)</p> <p>----- =2.87%</p> <p>CBP (174)</p> | <p>Formula (5309 &amp; 5313) DBE (16)</p> <p>----- =33%</p> <p>Active Consultant List (48)</p> |
|--|--|

#### Step 2: Adjustment to Base Figure

The overall goal was adjusted based on the following information:



1. Of the approximate 3.3 million dollars in transit contract funds for FY 2004, only 6.13% of these funds are conducive to subcontracting opportunities for ready and willing DBEs that provide relevant products and services required. As a result, the attainable amount of DBE participation is 1.67%, assuming that contracting needs are fulfilled by available DBEs.
2. Currently, NHDOT has five ready and willing DBEs for (Section 5311) that can fulfill administrative and operational contracting requirements: transit advertising (1), office product suppliers (2), printing services (2). Sections 5309 and 5313 have 16 active DBE Consultants that can provide transportation planning, public participation, and management consulting services for the transit industry.
3. When considering the amount of Federal money conducive to subcontracting under each program, the Department has determined that \$38,643 will be available for expenditure under Section 5311, and \$164,721 will be available under Sections 5309 and 5313. By applying the respective percentages calculated in the base figure (Step 1), an accurate level of anticipated DBE participation was derived.

#### 5.23.3 Breakout of Estimated Race-Neutral and Race-Conscious Participation

Considering the base figure from Step 1 and the impacts from Step 2, NHDOT, through its Bureau of Rail and Transit, has selected an overall annual DBE goal of 2% for Fiscal Year 2004. The NHDOT will obtain its goal through 1% race-neutral and 1% race conscious participation.

### **5.3 Means to Meet the Overall Goals (26.51)**

The NHDOT will use a combination of race-neutral and race-conscious means to achieve its annual overall goal.

#### 5.31 Race-Neutral

Pursuant to 49 CFR § 26.51, the NHDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The NHDOT has determined that race-neutral means will include:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
- Providing technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific opportunities;
- As Federal funding is made available, the NHDOT will implement a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Ensuring distribution of the NHDOT DBE directory; and
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Each time the NHDOT submits its overall goal for review and approval by the USDOT, the NHDOT will also submit the portion of the overall goal that can be expected to be met through race-neutral means and the basis for that position. If the NHDOT finds that it is not achieving the projected DBE participation through race-neutral means, which would result in the Department not meeting its overall goal, the NHDOT will apply race-conscious means (contract goals).

### 5.32 Race-Conscious

Race-Conscious measures will be in the form of contract goals. Contract goals will be used so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through race-neutral means. The NHDOT will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation by race-neutral means. That is, if actual race-neutral participation exceeds projected race-neutral participation, the NHDOT will reduce its use of race-conscious means. Conversely, if actual race-neutral participation falls short of projected race-neutral participation, the NHDOT will increase its usage of race-conscious means, however,

only as necessary to achieve its overall goal. Race-neutral and race-conscious participation will be monitored and reported separately.

The following provisions apply to the use of race-conscious contract goals:

- The NHDOT will use contract goals only on those Federally-funded contracts that have subcontracting possibilities; and
- The goal for a specific contract may be higher or lower than the percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by NHDOT's overall goal, the NHDOT will set contract goals so that they will cumulatively result in meeting any portion of NHDOT's overall goal not obtainable through the use of race-neutral means.

## **5.4 Good Faith Efforts (26.53)**

### **5.41 Procedures for DBE Contract Goal**

When the NHDOT has established a DBE contract goal, the contract will be awarded only to a bidder/offeror who makes good faith efforts to meet it. The NHDOT must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

- (1) Documents that it has obtained enough DBE participation to meet the goal; or
- (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, the NHDOT must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Attachment 7 for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

### **5.42 Demonstration of Good Faith Efforts**

The NHDOT treats bidder/offeror compliance with good faith efforts requirements as a matter of responsiveness. Each solicitation, for which a contract goal has been established, will require the

bidders/offerors to submit the following information to the NHDOT Bureau of Contracts within ten days after the bid opening date.

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE; (delete: firm participation)
4. Written and signed documentation of the bidder/offeror's commitment to use a DBE subcontractor; (delete: whose participation it submits to meet a contract goal)
5. Written and signed confirmation from the DBE that it is participating in the contract as specified in the Prime Contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts. See Attachment 7 for examples of good faith efforts.

#### 5.43 Administrative Reconsideration

A bidder/offeror who has not documented sufficient good faith efforts, may request administrative reconsideration within ten days of being informed of the situation. The bidder/offeror must make this request in writing to the following reconsideration official:

NHDOT  
 (Attn: Commissioner)  
 P.O. Box 483  
 7 Hazen Drive  
 Concord, NH 03302-0483  
 Tel: (603) 271-1484  
 Fax: (603) 271-3914  
[bureau10@USDOT.state.nh.us](mailto:bureau10@USDOT.state.nh.us)

The reconsideration official will not have played any role in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will also have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. A written decision of the reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make good faith efforts, will be sent to the

bidder/offeror. The result of the reconsideration process is not administratively appealable to USDOT.

#### 5.44 Good Faith Efforts When a DBE is Replaced on Federal-Assisted Contracts

The NHDOT will require the Prime Contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The NHDOT will require the Prime Contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the NHDOT will require the Prime Contractor to obtain NHDOT prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The NHDOT Standard Specifications for Road and Bridge Construction - Amendment to Section 103.06 - DBE Program Requirements, lists the contract remedies available to NHDOT in the events of non-compliance with the DBE regulation by a participant. See Attachment 8.

### 5.5 Counting DBE Participation (26.55)

The NHDOT will monitor DBE participation for all Federal-aid highway contracts. DBE participation will be based in the value of work performed by DBEs, consistent with § 26.55. Monitoring will be conducted on all of these contracts, whether or not the project has a DBE project goal.

The NHDOT will count DBE participation toward overall and contract goals according to the following criteria:

- The NHDOT will only count the value of the work actually performed by and paid to DBEs, including the cost of supplies and materials obtained by the DBE for work on the contract (except supplies and equipment purchases or leases from the prime contractor.)
- The NHDOT will count payments to a DBE contractor only if the DBE is performing a commercially useful function (CUF) on the contract. See Attachment 9.

- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE; work contracted to a non-DBE firm does not count toward the goal.
- If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR § 26 at the time of the execution of the contract, the NHDOT will not count the firm's participation toward any DBE requirements.
- The NHDOT will not count towards the overall DBE requirements the dollar value of work performed under contract with a firm after it has ceased to be certified.
- The NHDOT will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or NHDOT's overall DBE goal until the dollar amount being counted has been paid directly to the DBE.
- Credits toward contract goals varies with the type of DBE firm. See § 26.55.

## **6. Information Collecting and Reporting**

### **6.1 Bidders List (26.11)**

The NHDOT collects the required data for a bidders list from all bidders by conducting surveys that will result in a statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to perform work on Federal-aid construction projects in New Hampshire. This information is vital to the calculation of the NHDOT overall DBE goal.

The NHDOT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The bidders list must include:

- 1.- Company name;
- 2.- Company address;
- 3.- Company's status as a DBE or non-DBE;
- 4.- the age of the company;
- 5.- The annual gross receipts of the company; and
- 6.- Type of work performed.

The NHDOT will collect this information in the following ways:

1. The prime contractors list information will be obtained through the NHDOT Contract Office.
2. The bidders list information will be obtained utilizing direct mailings to prime and subcontractors.

## **6.2 Monitoring and Enforcement Mechanism (26.37)**

The NHDOT will notify of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the U.S. Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. The NHDOT also will consider similar action under its own legal authorities, including termination of the contract of such remedy as the NHDOT deems appropriate.

The NHDOT Standard Specifications for Road and Bridge Construction- Amendment to Section 103.06- DBE Program Requirements, lists the contract remedies available to the NHDOT in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

In addition to regular monitoring of DBE participation on the project site by the Contract Administrator, field visits will be conducted by the Compliance Review Officer to inspect the participation of DBEs to fulfill DBE participation requirements on projects with contract goals. Interviews will be conducted with supervisors, and employees of the prime contractor and subcontractors.

For sealed bid projects with DBE goal requirements, the prime contractor will have 10 days from the date of bid to submit for approval a list of the DBE firms to perform work, the subcontract agreement executed by both parties identifying the items of work for each firm, their individual value, and the total value of all subcontracts. These agreements will be reviewed for compliance with the State and Federal laws and with the DBE Program Plan.

For prequalifications-based selection projects with DBE goal requirements, the consultants will submit a list of DBE firms intended to be used on the project with the Letter of Interest. Upon completion of the selection process the successful consultant will have 10 days from the notice of selection to submit executed subcontract agreements identifying the type of work and its value. These agreements will be reviewed for compliance with the State and Federal laws and with the DBE Program Plan.

### **6.3 Reporting to the USDOT (26.11)**

The NHDOT will report DBE awards or commitments and payments biannually using the new Uniform Report of DBE Awards of Commitments and Payments. The report due June 1 will cover data from October 1 – March 31 and the report due December 1 will cover data from April 1 – September 30. All dollar amounts reported reflect the Federal share of such contracts. The NHDOT will report separately the dollar amount awarded to certified DBEs through the use of race-conscious methods and race-neutral methods.

### **6.4 Record Keeping**

The NHDOT will maintain records of committed DBE goals and actual payments by contract. Information relating to basic program data will be retained for a minimum of three years. Prime contractors are also required to maintain record and documents of payments to DBEs three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the NHDOT or USDOT.

### **6.5 Confidentiality**

Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to USDOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.



**Attachment 1: 26.5 Definition of Terms**

The following definitions are referenced in 49 CFR § 26.5

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR § 121.

- (1) Except as otherwise provided in 13 CFR § 121, concerns are affiliates of each other when, either directly or indirectly:
  - (i) One concern controls or has the power to control the other; or
  - (ii) A third party or parties controls or has the power to control both; or
  - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

**Compliance** means that a recipient has correctly implemented the requirements of this part.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered a contract.

**Contractor** means one who participates, through a contract or subcontract (at any tier), in a USDOT-assisted highway, transit, or airport program.

**Department or USDOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**Disadvantaged Business Enterprise or DBE** means a for-profit small business concern –

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**USDOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**USDOT/SBA Memorandum of Understanding or MOU**, refers to the agreement signed on November 23, 1999, between the USDOT and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a)DB) and Small Disadvantaged Business (SBD) programs, and USDOT's Disadvantaged Business Enterprise (DBE) program for small disadvantaged businesses.

**Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined

portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**NHDOT** means the New Hampshire Department of Transportation

**Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

**Operating Administration** or OA means any of the following parts of USDOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

**Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**Primary industry classification** means the four digit *Standard Industrial Classification (SIC)* code designation, which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the *North American Industrial Classification System (NAICS)* replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).

**Primary recipient** means a recipient which USDOT financial assistance and passes some or all of it on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

**Program** means any undertaking on a recipient's part to use USDOT financial assistance, authorized by the laws to which this part applies.

**Race-conscious measure** or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-neutral measure** or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

**Recipient** is any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

**Secretary** means the Secretary of Transportation or his/her designee.

**Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

**Small Business Administration** or SBA means the United States Small Business Administration.

**Small business concern** means, with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

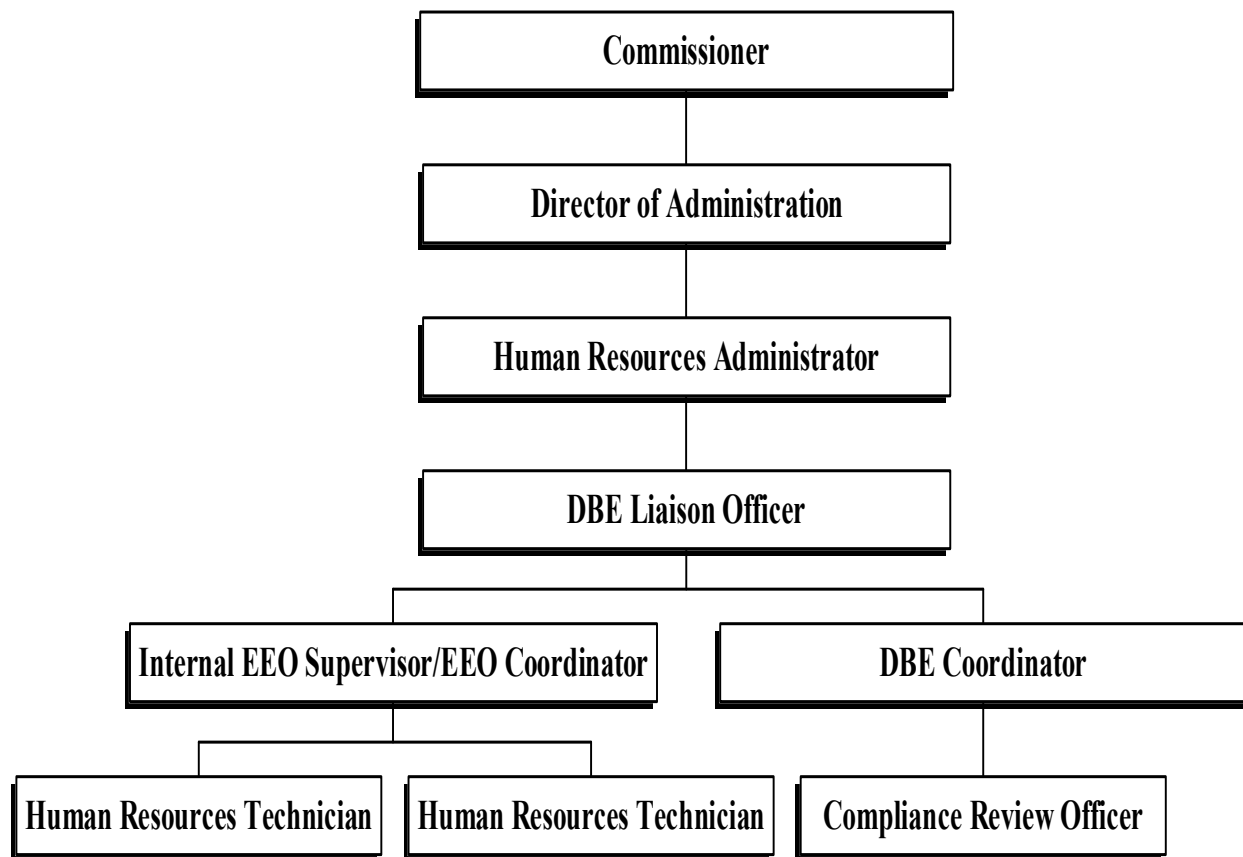
**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

**You** refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

## Attachment 2: Organization Chart



### **Attachment 3: DBE Directory**

**A & E FLOORING, INC**

WBE

**Contact:** GUILD HILL**Address:** 59 LONDONDERRY TNP  
HOOKSETT NH 03106**Tel:** 603 625 1266**Fax:** 603 644 1838**e-mail:** sales@aeflooring.com**web site:** www.aeflooring.com**Products and Services**Flooring  
Shotblasting**A.D. ROSSI CORP**

WBE

**Contact:** ALAN ROSSI**Address:** PO BOX 566  
ST JOHNSBURY VT 05819**Tel:** 802 748 4378**Fax:** 802 748 9974**e-mail:** adrossi@together.net**web site:****Products and Services**Bridge Deck Membrane  
Bridge Expansion Joints  
Bridge Rail  
Bridge Waterproofing  
Fencing**AC ELECTRICAL SYSTEMS, INC**

MBE

**Contact:** MANUEL S. BRITTO**Address:** 127 GALLATIN STREET  
PROVIDENCE RI 02907**Tel:** 401 467 6910**Fax:** 401 461 2470**e-mail:** mbritto@acelectricalsystems.com**web site:** www.acelectricalsystems.com**Products and Services**

Electrical

**ALONSO CONSTRUCTION CO**

MBE

**Contact:** JUAN J ALONSO**Address:** 134 DRAWFORD STREET  
FITCHBURG MA 01420**Tel:** 978 342 1110**Fax:** 978 343 0076**e-mail:****web site:****Products and Services**Inverts  
Manholes



**AMERICAN INDIAN BUILDERS AND SUPPLIERS, INC.****MWBE****Contact:** ELMA R. PATTERSON**Address:** 1162 RIDGE ROAD  
LEWISTON NY 14092**Tel:** 716 754 8385**Fax:** 716 754 8636**e-mail:** info@americanindianbuilders.com**web site:** www.americanindianbuilders.com**Products and Services**

Bridge Painting

Bridge Work

Culverts

Drainage

Electrical

Highway Lighting

Hydrants

Metal Fabrication

Pipe

Plumbing

Pre-Cast Concrete

Pull Boxes, Light Bases

Rebar

Reinforcing Steel

Septic Systems

Sign Structures

Steel Erection

Structural Painting

Water lines, Concrete products

**ARMAND LEMIRE CO, INC****WBE****Contact:** DIANE BAINES**Address:** 7 DARTMOUTH ST PO BOX 16454  
HOOKSETT NH 03106**Tel:** 603 625 5233**Fax:** 603 625 5679**e-mail:** aelemire@aol.com**web site:****Products and Services**

HVAC

Plumbing

**BII FENCE AND GUARDRAIL, INC****MBE****Contact:** REX BARROS**Address:** 15 DUTILE RD  
BELMONT NH 03220**Tel:** 603 524 1415**Fax:** 603 524 1443**e-mail:****web site:****Products and Services**

Bridge Rail

Fencing

Fence Products

Guardrail

Playgrounds

**BLACK ROCK PAVING, INC****MBE****Contact:** VICTOR MONIZ**Address:** 100 ZION HILL RD  
SALEM NH 03079**Tel:** 603 898 1967**Fax:** 603 898 1968**e-mail:** blackrock1994@aol.com**web site:****Products and Services**

Curbing

Paving

Sidewalk

**BUSBY CONSTRUCTION CO, INC****WBE****Contact:** VIRGINIA A. BUSBY**Address:** 9 POND LANE  
ATKINSON NH 03811**Tel:** 603 362 4650**Fax:** 603 362 5051**e-mail:** construction@busby.mv.com**web site:****Products and Services**

|                      |                   |             |
|----------------------|-------------------|-------------|
| Bridge Excavation    | Humus             | Sewer Lines |
| Culverts             | Landscaping       | Sidewalk    |
| Excavation           | Pipe              | Sitework    |
| Fire Hydrant Install | Reclaiming        | Trucking    |
| Grading              | Road Construction | Water lines |
| Granular Backfill    | Septic Systems    |             |

**CARON PIPE JACKING, INC****WBE****Contact:** JACQUELINE MALS**Address:** 77 WILLOW BROOK RD  
BERLIN CT 06037**Tel:** 860 828 0050**Fax:** 860 828 9568**e-mail:** info@pipejackingne.com**web site:** www.pipejackingne.com**Products and Services**

Borings  
Culverts  
Road Construction  
Pipe Jacking  
Horizontal Boring  
Soil Stabilization

**CHARLES GEORGE TRUCKING CO, INC****WBE****Contact:** KAREN GEORGE**Address:** 209 NASHUA ROAD  
LONDONDERRY NH 03053**Tel:** 800 720 3034**Fax:** 603 425 2980**e-mail:** kgeorge@cgtrucking.com**web site:** www.cgtrucking.com**Products and Services**

Trucking

Solid waste disposal transport and freight hauling

**CHENANGO CONTRACTING, INC****MBE****Contact:** CHUCK RHOADES**Address:** 29 ARBUTUS ROAD  
JOHNSON CITY NY 13790**Tel:** 607 729 8500**Fax:** 607 729 2415**e-mail:** chenango@chenangocontracting.com**web site:** www.chenangocontracting.com**Products and Services**

Geosynthetics  
Demolition  
Structural Concrete Removal

**COASTAL LANDSCAPING, LLC****WBE****Contact:** LYN STEVENS**Address:** P.O. BOX 388  
HAMPTON FALLS NH 03844**Tel:** 603 929 0866**Fax:** 603 929 0431**e-mail:** llstevens@attbi.com**web site:** www.coastallandscaping.net**Products and Services**Curbing  
Hydroseeding  
Landscaping  
Masonry work  
Plantings  
Sidewalk

Sodding

Brick sidewalk

**CONSTRUCTION MATERIALS TESTING, INC****WBE****Contact:** SUSAN F DEAN**Address:** 88 S WHITEFIELD RD  
WHITEFIELD NH 03598**Tel:** 603 837 9332**Fax:** 603 837 9335**e-mail:** warden@ncia.net**web site:** www.nhb2b.com/cmt.htm**Products and Services**

Material Testing

**CON-TEC, INC****WBE****Contact:** SHERYLL GARSIDE**Address:** P.O. BOX 1153  
CONCORD NH 03302**Tel:** 603 437 4707**Fax:** 603 437 0034**e-mail:** sheryll@contecinc.net**web site:****Products and Services**Borings  
Drilling  
Geotechnical**CWS FENCE AND GUARDRAIL CO****WBE****Contact:** LORRAINE SLITER**Address:** 18 TEN PENNY LANE, RTE 11  
ANDOVER NH 03216**Tel:** 603 735 5465**Fax:** 603 735 5547**e-mail:** cwsfence@tds.net**web site:** www.cwsfence.com**Products and Services**Bridge Rail  
Guardrail

Bridge rail fence

**DAISY ELECTRIC, INC****MWBE****Contact:** DENISE FAVALORO**Address:** P.O. BOX 2515  
SEABROOK NH 03874**Tel:** 603 926 2367**Fax:** 603 926 6987**e-mail:** dloro@aol.com**web site:****Products and Services**Electrical  
Highway Lighting  
Site Lighting  
Traffic Signals**DL KING & ASSOCIATES, INC****WBE****Contact:** DONNA KING**Address:** 3 HOWE DR UNIT 1  
AMHERST NH 03031**Tel:** 603 883 5880**Fax:** 603 883 5061**e-mail:** dlking03031@aol.com**web site:** www.dl-king.com**Products and Services**Abatement Svcs  
Construction Management  
Environmental  
Remediation**EL WATERMAN, INC****WBE****Contact:** LYLA WATERMAN**Address:** 9 RHODES STREET  
PLAINVILLE MA 02762**Tel:** 508 699 3893**Fax:** 508 699 3908**e-mail:** watermanel@aol.com**web site:****Products and Services**

|                   |                       |
|-------------------|-----------------------|
| Manhole Coring    | Sewer Lines           |
| Pipe              | Steel Erection        |
| Plumbing          | Stormwater Management |
| Pre-Cast Concrete | Water lines           |
| Rebar             |                       |
| Septic Systems    |                       |

**ELECTRICAL INSTALLATIONS, INC****WBE****Contact:** DARLENE M FRITZ**Address:** PO BOX 1331  
CENTER HARBOR NH 03226**Tel:** 603 253 4525**Fax:** 603 253 6284**e-mail:** eii@worldpath.net**web site:****Products and Services**

Electrical

Instrumentation and controls

**ET & L CONSTRUCTION CORP****WBE****Contact:** JENNIE LEE COLOSI**Address:** 873 GREAT ROAD # 202 PO BOX  
STOW MA 01775**Tel:** 978 897 4353**Fax:** 978 897 0779**e-mail:** jlcolosi@etlcorp.com**web site:** www.etlcorp.com**Products and Services**

Bridge Excavation  
 Bridge Removal  
 Bridge Work  
 Culverts  
 Curbing  
 Demolition

Erosion Control  
 Excavation  
 Granular Backfill  
 Landfill Closures  
 Road Construction  
 Sitework

**EXPERIENCED TRAFFIC CONTROL, LLC****WBE****Contact:** HOLLY WENTWORTH**Address:** PO BOX 2154  
WEST BRATTLEBORO VT 05303**Tel:** 802 257 0476**Fax:** 802 365 7251**e-mail:** etc\_llc@yahoo.com.**web site:****Products and Services**

Flagging  
 Traffic Control

**FEDERAL FLOOR, INC.****WBE****Contact:** CAROLE A. SOUZA**Address:** PO BOX 337, 39 JEREMY HILL RD  
PELHAM NH 03076**Tel:** 603 635 3836**Fax:** 603 635 3836**e-mail:** ffipelhamnh@adelphia.net**web site:****Products and Services**

Flooring  
 Shotblasting

Epoxy; Urethane; Resurfacing; Terrazo; Concrete Restoration; Staining

**FITZGERALD GRADING, INC****WBE****Contact:** PAMELA FITZGERALD**Address:** 6 TOPPAN LANE  
HAMPTON FALLS NH 03844**Tel:** 603 926 2120**Fax:** 603 926 2120**e-mail:****web site:****Products and Services**

Grading  
 Reclaiming

**FLETCH'S SANDBLASTING & PAINTING, INC**

WBE

**Contact:** CHERYL FLETCHER**Address:** 52 SHIRKING ROAD  
EPPING NH 03042**Tel:** 603 679 3400**Fax:** 603 679 3465**e-mail:** fletchsandblasting@hotmail.com**web site:** www.fletchssandblasting.com**Products and Services**Bridge Painting  
Demolition  
Lead Abatement Services  
Shotblasting  
Structural Painting  
Sandblasting**F-NUMBER TESTING**

WBE

**Contact:** MARIA SOMERO**Address:** PO BOX 486 99 TEMPLE ROAD  
NEW IPSWICH NH 03071**Tel:** 603 878 1634**Fax:** 603 878 2931**e-mail:** maria\_somero@yahoo.com**web site:****Products and Services**

F-Number Testing

**GEOLOGICAL- EARTH EXPLORATION, INC**

WBE

**Contact:** DEBORAH Q AREY**Address:** 35 COMMERCIAL DRIVE  
WRENTHAM MA 02093**Tel:** 508 384 4453**Fax:** 508 384 4452**e-mail:** darey@tiac.net**web site:****Products and Services**Excavation  
Drilling

Provide labor and equipment to perform excavation and drilling for environmental and geotechnical projects.

**HIGHWAY MARKINGS**

WBE

**Contact:** GAYE BROWN**Address:** 9 SIDNEY DRIVE  
BERWICK ME 03901**Tel:** 603 765 0747**Fax:** 207 698 5868**e-mail:****web site:****Products and Services**Pavement Markings  
Traffic Signs

**HONG ENVIRONMENTAL, INC****MWBE****Contact:** JENNY HONG**Address:** 500 MARKET STREET SUITE 1A  
PORTSMOUTH NH 03801**Tel:** 603 431 3344**Fax:** 603 431 5810**e-mail:** jhong@hongenvironmental.com**web site:** www.hongenvironmental.com**Products and Services**

Abatement Svcs  
 Asbestos Removal  
 Building Trade Work  
 Construction Management  
 Demolition  
 Landscaping

**INTERPORT TOWING & TRANSPORTATION, INC****WBE****Contact:** LUCINDA SMITH**Address:** PO BOX 30 44 PRATTS ISLAND R  
SOUTHPORT ME 04576**Tel:** 207 633 4268**Fax:** 207 633 4401**e-mail:** interpt@gwi.net**web site:****Products and Services**

Barge Transport  
 Tug Service

**J & S CONCRETE PUMPING AND GROUTING, INC****WBE****Contact:** JULIE GUARINO**Address:** 71 ADAMS POND ROAD  
DERRY NH 03038**Tel:** 603 432 8017**Fax:** 603 432 8017**e-mail:** jscon@comcast.net**web site:****Products and Services**

Concrete Work

Concrete Repair; Shotcrete; Pressure Grouting; Crack Repair

**JCB COLBY, INC****WBE****Contact:** JEAN IRIANA COLBY**Address:** P.O. BOX 123  
LUNENBURG VT 05906**Tel:** 802 892 7795**Fax:** 802 892 1143**e-mail:****web site:****Products and Services**

Masonry work  
 Sidewalk

**KC ELECTRIC CO, INC****WBE****Contact:** KIMBERLY COHEN**Address:** 10 PRIMROSE LANE  
SALEM NH 03079**Tel:** 603 894 5992**Fax:** 603 894 4731**e-mail:** kcelec103@hotmail.com**web site:****Products and Services**

Bridge Work  
 Building Trade Work  
 Electrical  
 Highway Lighting  
 Site Lighting  
 Sitework

**L & D SAFETY MARKING CORP****WBE****Contact:** DEBRA LEE RICKER**Address:** 115 INDUSTRIAL LN-BERLIN  
BARRE VT 05641**Tel:** 802 223 6154**Fax:** 802 229 1848**e-mail:** debrar@worksafetci.com**web site:****Products and Services**

Pavement Markings  
 Traffic Signs

**L.A. RUIZ ASSOCIATES, INC****MBE****Contact:** LAURO RUIZ**Address:** 354 MERRIMACK STREET SUITE  
LAWRENCE MA 01843**Tel:** 978 686 2225**Fax:** 978 686 7775**e-mail:** laruizassc1@aol.com**web site:****Products and Services**

Building Trade Work  
 Carpentry  
 Construction Management  
 Demolition  
 Masonry work  
 Property Management  
 General Contractor

**LAW'S NURSERY & GARDEN CENTER****WBE****Contact:** NANCY V LAW**Address:** P.O. BOX 477  
LISBON ME 04250**Tel:** 207 353 4158**Fax:** 207 353 2892**e-mail:** rlaw323735@aol.com**web site:****Products and Services**

Erosion Control Plans  
 Fencing  
 Hydroseeding  
 Landfill Closures  
 Sodding



**M & D PAVING ENTERPRISES, INC****WBE****Contact:** MELANIE DUBREUIL**Address:** 672 UNION ROAD  
BELMONT NH 03220**Tel:** 603 524 1524**Fax:** 603 524 2801**e-mail:** m090860@hotmail.com**web site:****Products and Services**Curbing  
Grading  
Paving  
Sidewalk

Excavation related to prep work for driveway paving; Sawcut

**MACHADO & SON LANDSCAPING & PAVING CO, INC****MBE****Contact:** THOMAS MACHADO**Address:** 147 BILLERICA ST  
LOWELL MA 01852**Tel:** 978 454 0783**Fax:** 978 458 2970**e-mail:** tom25may00@aol.com**web site:** www.machadopaving.com**Products and Services**Landscaping  
Paving  
Sidewalk  
Sodding**MAINE REBAR SERVICES, INC****WBE****Contact:** ERNESTINE M WOODBURY**Address:** PO BOX 2003  
WINDHAM ME 04062**Tel:** 207 893 0088**Fax:** 207 893 0088**e-mail:** mainerebar@aol.com**web site:****Products and Services**Rebar  
Rebar Materials**MARIKINA ENGINEERS AND CONSTRUCTION CORP****MBE****Contact:** ROMEO P CRUZ**Address:** PO BOX 26202  
WEST HAVEN CT 06516**Tel:** 203 799 1013**Fax:** 203 799 8382**e-mail:** marikinacorp@aol.com**web site:****Products and Services**Bridge Rail  
Bridge Removal  
Guardrail  
Steel Erection

Pre-cast concrete installation only; Settling pre-stress/steel beam; Sign structures erection only

**MCCOY FENCE, INC****MBE****Contact:** RALPH MCCOY**Address:** 14 BAIRD STREET  
DORCHESTER MA 02124**Tel:** 617 288 7811**Fax:** 617 288 7512**e-mail:** mccoymfence@aol.com**web site:****Products and Services**Bridge Rail  
Fencing  
Fence Products  
Guardrail**MOOSEHEAD HARVESTING, INC****WBE****Contact:** KATHLEEN REED**Address:** P.O. BOX 159  
LINCOLN NH 03251**Tel:** 603 745 6604**Fax:** 603 745 6604**e-mail:** moose1.javanet@rcn.com**web site:****Products and Services**Clearing/Grubbing  
Crush  
Excavation  
Grading  
Sitework**N.L. CONSTRUCTION, INC****WBE****Contact:** JOAN LUPA**Address:** 545 WEST STREET  
LUDLOW MA 01056**Tel:** 413 589 9883**Fax:** 413 589 9736**e-mail:****web site:****Products and Services**Building Trade Work  
Landscaping**NICOM COATING CORP****WBE****Contact:** ROBIN C NICHOLSON**Address:** P.O. BOX 727  
BARRE VT 05641**Tel:** 802 229 5261**Fax:** 802 229 5222**e-mail:** rcnnicom@aol.com**web site:****Products and Services**Bridge Deck Membrane  
Bridge Expansion Joints  
Bridge Waterproofing  
Crack Filling  
Joint Repair  
Sawcut & Seal

Sealcoating

**NORTH AMERICAN EQUIPMENT UPFITTERS, INC****WBE****Contact:** JANET DUNICAN**Address:** 6 SUTTON CIRCLE  
HOOKSETT NH 03106**Tel:** 603 624 6288**Fax:** 603 624 6289**e-mail:** mdunican@naeuinc.com**web site:** www.naeuinc.com**Products and Services**

Assembly - specializing in mounting ariel lift equipment for telephone, cable and power industries Work with customers to develop specifications for fleet.

**NORTH STAR PAINTING CO., INC.****WBE****Contact:** IRENE N KALOURIS**Address:** 3526 MCCARTNEY ROAD  
YOUNGSTOWN OH 44505**Tel:** 330 743 2333**Fax:** 330 743 3434**e-mail:** kalouris@new.rr.com**web site:****Products and Services**

Abatement Svcs  
Bridge Painting  
Bridge Work  
Lead Abatement Services  
Sealcoating  
Shotblasting

**NORTHEAST TRAFFIC CONTROL SERVICES, INC****WBE****Contact:** DENISE V WALLACE-SPENCER**Address:** P.O. BOX 946  
PLYMOUTH MA 02362**Tel:** 508 746 4450**Fax:** 508 746 7160**e-mail:** netraffic@adelphia.net**web site:****Products and Services**

Pre-Cast Concrete  
Sign Structures  
Traffic Control  
Traffic Signals Portable  
Traffic Signs  
Concrete Products

Traffic control products and equipment rental; Traffic signals manufacturer

**ON THE SPOT SERVICES****DBE****Contact:** HOLLY STEEVES**Address:** 29 ARCADIA STREET FIRST FLO  
PORTLAND ME 04103**Tel:** 207 772 3298**Fax:** 207 782 1702**e-mail:** cpaaub33@aol.com**web site:****Products and Services**

Flagging  
Traffic Control

Stadium Cleaning

**P & R EXCAVATING SERVICE INC****WBE****Contact:** MARILYN CRANE**Address:** 172 MAIN ST  
LANCASTER NH 03584**Tel:** 603 788 3770**Fax:** 603 788 3858**e-mail:** PTMC@PRODIGY.NET**web site:****Products and Services**

Bridge Excavation  
Clearing/Grubbing  
Cofferdam  
Culverts  
Curbing  
Demolition

Drainage  
Excavation  
Fire Hydrant Install  
Grading  
Granular Backfill  
Sidewalk

Pre-Cast Concrete  
Reclaiming  
Road Construction  
Septic Systems  
Sewer Lines  
Water lines

Water pressure testing, Repairing manholes and catch basins

**P.A. FRENCH TRUCKING****WBE****Contact:** PHYLLIS BENSON**Address:** 567 HILL ROAD PO BOX 6071  
FRANKLIN NH 03235**Tel:** 603 934 5778**Fax:****e-mail:****web site:****Products and Services**

Trucking

**PAIGE WELDING CO, INC****WBE****Contact:** GAYLE PAIGE**Address:** PO BOX 104  
WENTWORTH NH 03282**Tel:** 603 764 5588**Fax:** 603 764 9489**e-mail:** pwci@juno.com**web site:****Products and Services**

Concrete Anchor  
Shear Connectors  
Stud Welding

**PINE STATE SAFETY LINES, INC****WBE****Contact:** MARILYN ELWELL**Address:** P.O. BOX 261  
TOPSHAM ME 04086**Tel:** 207 725 2943**Fax:** 207 725 6014**e-mail:** gelwell@gwi.net**web site:****Products and Services**

Curbing  
Pavement Markings  
Paving  
Sealcoating  
Traffic Analysis

Removal of pavement markings

**PYRAMID STEEL SERVICE, INC****WBE****Contact:** JOANN KUTSCHMAN**Address:** 6 COLBURN RD  
BROOKLINE NH 03033**Tel:** 603 673 6485**Fax:** 603 673 6485**e-mail:****web site:****Products and Services**

Reinforcing Steel

Reinforcing steel placement, wire mesh placement.

**RICHARDSON ELECTRICAL CO, INC.****WBE****Contact:** LINDA RICHARDSON**Address:** 17 BATCHELDER RD PO BOX 1330  
SEABROOK NH 03874**Tel:** 603 474 3900**Fax:** 603 474 7755**e-mail:** richelecco@aol.com**web site:****Products and Services**Electrical  
Highway Lighting  
Pull Boxes, Light Bases  
Site Lighting  
Traffic Control  
Traffic Signals

Corrosion control; power distribution; and generators

**RJ WATSON, INC****WBE****Contact:** CANDYCE L WATSON**Address:** 78 JOHN GLENN DR  
AMHERST NY 14228**Tel:** 716 691 3301**Fax:** 716 691 3305**e-mail:** cwatson@rjwatson.com**web site:** www.rjwatson.com**Products and Services**Bridge Expansion Joints  
Bridge Waterproofing  
Bridge Work**ROBINSON CONSTRUCTION, INC****WBE****Contact:** GAYLEE GAURON ROBINSON**Address:** 20 BROWN ROAD  
HAMPTON FALLS NH 03844**Tel:** 603 964 6891**Fax:** 603 964 4093**e-mail:****web site:****Products and Services**Demolition  
Drainage  
Excavation  
Grading  
Granular Backfill

Gravels; stone items and utilities

**SEACOAST ASPHALT SERVICES, INC****WBE****Contact:** JENNIFER L NICOLAI**Address:** 25 HIGHLAND AVENUE  
GREENFIELD MA 01301**Tel:** 413 773 9247**Fax:** 413 774 6448**e-mail:** sasjen@valinet.com**web site:** www.seacoastasphalt.com**Products and Services**Joint Repair  
Trucking  
Supplier Asphalt Cement

Rubber Joint Application; Tack Work; Supply of Asphalt Cement, Emulsions, and Aggregates

**SEALCOATING, INC****WBE****Contact:** ELIZABETH WUORI**Address:** 120 INDUSTRIAL PARK RD  
HINGHAM MA 02043**Tel:** 781 749 6802**Fax:** 781 749 2654**e-mail:** ewuori@sealcoatinginc.com**web site:** www.sealcoatinginc.com**Products and Services**Bridge Deck Membrane  
Bridge Excavation  
Bridge Expansion Joints  
Bridge Waterproofing  
Bridge Work  
Crack FillingJoint Repair  
Sawcut & Seal  
Sealcoating

Micro surfacing; hot in-place asphalt surface recycling

**SUBURBAN PAVING, INC****WBE****Contact:** SANDRA LACHANCE**Address:** P.O. BOX 587  
SUNCOOK NH 03275**Tel:** 603 485 8844**Fax:** 603 485 3810**e-mail:** subpavinginc@comcast.net**web site:****Products and Services**Curbing  
Paving  
Sidewalk  
Trucking**TAC CONSTRUCTION, INC****MBE****Contact:** MARCOS CORBO**Address:** PO BOX 912  
LEOMINSTER MA 01453**Tel:** 978 534 6859**Fax:** 978 534 6746**e-mail:** tacconstru@aol.com**web site:****Products and Services**Curbing  
Drainage  
Inverts  
Joint Repair  
Landscaping  
Masonry workRoad Construction  
Sewer Lines  
Sidewalk

**TARGET CONSTRUCTION****WBE****Contact:** LISA GREEN**Address:** 14 PINWOOD ROAD  
SALEM NH 03079**Tel:** 603 893 2229**Fax:** 603 890 9171**e-mail:** targetwbe@aol.com**web site:****Products and Services**

Bridge Excavation  
 Bridge Waterproofing  
 Bridge Work  
 Carpentry  
 Clearing/Grubbing  
 Concrete Work

Culverts  
 Curbing  
 Drainage  
 Excavation  
 Irrigation  
 Landfill Closures

Pipe  
 Road Construction  
 Septic Systems  
 Sewer Lines  
 Sidewalk  
 Tree Removal

**TRI-COUNTY QUARRY****WBE****Contact:** NINA M. THORNTON**Address:** 33 GUINEA ROAD  
BERWICK ME 03901**Tel:** 207 698 9937**Fax:****e-mail:** thorndn10@aol.com**web site:****Products and Services**

Culverts  
 Excavation  
 Granular Backfill  
 Tree Removal

Aggregates; Timber

**TRI-STATE PAINTING, INC****WBE****Contact:** IRENE PESKINSKI**Address:** P.O. BOX 1240  
TILTON NH 03276**Tel:** 603 286 7657**Fax:** 603 286 7882**e-mail:** tristate@metrocast.net**web site:****Products and Services**

Bridge Painting  
 Lead Abatement Services

Structural steel preparation; containment

**VHG LABS, INC****WBE****Contact:** SUSAN J EVANS NORRIS**Address:** 276 ABBY RD  
MANCHESTER NH 03103**Tel:** 603 622 7660**Fax:** 603 622 5180**e-mail:** sue@vhglabs.com**web site:** www.vhglabs.com**Products and Services**

Material Testing  
 Testing Hydrostate

Laboratory testing; chemical standard; and analytical chemistry consulting

**WIGGIN-HYDROSEED LANDSCAPING****WBE****Contact:** ROSEMARY WIGGIN**Address:** 76 ASHUELOT RD  
NORTHFIELD MA 01360**Tel:** 413 498 5720**Fax:** 603 239 7414**e-mail:** shelwig@cheshire.net**web site:****Products and Services**Hydroseeding  
Landfill Closures  
Landscaping  
Plantings**WOLCOTT CONSTRUCTION, INC****MBE****Contact:** WILLIAM HURST**Address:** PO BOX 509  
GILMANTON NH 03237**Tel:** 603 267 9400**Fax:** 603 267 9045**e-mail:** wolcott500@msn.com**web site:****Products and Services**Paving  
Trucking**WORKSAFE TRAFFIC CONTROL INDUSTRIES, INC****WBE****Contact:** LORENA R LAPRADE**Address:** 115 INDUSTRIAL LN-BERLIN  
BARRE VT 05641**Tel:** 802 223 6154**Fax:** 802 229 1848**e-mail:** lorena@worksafetci.com**web site:** www.worksafetci.com**Products and Services**

Traffic Control

Traffic control devices including arrowboards, message boards and pavement marking materials.



**ACERO GROUP INTERNATIONAL, INC****MWBE****Contact:** MIRIAM A. BAILEY**Address:** PO BOX 314  
NEW HAMPTON NH 03256**Tel:** 603 968 3774**Fax:** 603 968 9524**e-mail:** acero@cyberportal.net**web site:****Products and Services**

Construction Management  
Engineering Services  
Roofing  
Site Inspection  
Civil Engineering

**ADVANCED TECHNOLOGIES INTEGRATION, INC****DBE****Contact:** LENNY HUIE**Address:** 7760 FRANCE AVENUE SOUTH 11  
MINNEAPOLIS MN 55435**Tel:** 888 733 2844**Fax:** 952 345 1841**e-mail:** lhuie@atiko.com**web site:** www.atiko.com**Products and Services**

Information Technology  
Computer Programming  
Software Services

**AEROTECH CORPORATION****MBE****Contact:** DON SMITH**Address:** 365 SMITH ST SUITE 1  
PROVIDENCE RI 02908**Tel:** 401 351 0600**Fax:** 401 351 6755**e-mail:** dasmith@aerotechcorp.com**web site:** www.aerotechcorp.com**Products and Services**

Aerial Photography  
CADD Drafting  
Photogrammetry  
Topographic Mapping

**AGGREGATE CONSULTING, INC****WBE****Contact:** KATHLEEN CUSSON-CAIL**Address:** 1361 ELM STREET SUITE 208  
MANCHESTER NH 03101**Tel:** 603 622 8008**Fax:** 603 622 8009**e-mail:** KATHYCC@COLLABRESOURCE.COM**web site:** www.aggregateconsulting.com**Products and Services**

CADD Drafting  
Communication Services  
Management Consulting  
Marketing Services  
Printing

Services include business strategy, business planning, marketing development and strategies, project coordination, & event coordination. Also offers use of facility, including computer lab, conference/board roomseminar space, office services.

**AMETHYST ENVIRONMENTAL, LTD****WBE****Contact:** KAREN E LONG**Address:** 22 LEE HILL ROAD  
LEE NH 03824**Tel:** 603 659 4442**Fax:** 603 679 1464**e-mail:** amethyst@sprintmail.com**web site:** www.amethystenvironmental.com**Products and Services**Sewer Lines  
Water lines

Safety and health consulting; and pipe line rehabilitation

**AMRO ENVIRONMENTAL LABORATORIES CORP****WBE****Contact:** MARIA N BORDUZ**Address:** 111 HERRICK ST  
MERRIMACK NH 03054**Tel:** 603 424 2022**Fax:** 603 429 8496**e-mail:****web site:****Products and Services**

Environmental

Environmental laboratory testing.

**APPLIED PAVEMENT TECHNOLOGY, INC****WBE****Contact:** KATHRYN A ZIMMERMAN**Address:** 3001 RESEARCH RD SUITE C  
CHAMPAIGN IL 61822**Tel:** 217 398 3977**Fax:** 217 398 4027**e-mail:** kzimmerman@pavementsolutions.com**web site:** www.pavementsolutions.com**Products and Services**Civil Engineering  
Pavement Evaluation  
Pavement Testing

Pavement related training courses; Pavement management system

**BAKER/WOHL ARCHITECTS, INC****WBE****Contact:** MARGARET E GARET WOHL**Address:** 2A UNION PARK ST  
BOSTON MA 02118**Tel:** 617 350 7420**Fax:** 617 350 5383**e-mail:** gwohl@baker-wohl.com**web site:** www.baker-wohl.com**Products and Services**

Architectural

**BRYANT ASSOCIATES, INC****MBE****Contact:** JACK BRYANT**Address:** 160 NORTH WASHINGTON ST S  
BOSTON MA 02114**Tel:** 617 248 0300**Fax:** 617 248 0212**e-mail:** jbryant@bryant-engrs.com**web site:** www.bryant-engrs.com**Products and Services**

Bridge Design  
 Bridge Inspection  
 CADD Drafting  
 Civil Support Services  
 Erosion Control  
 Hydraulics

Landscape Architecture  
 Mapping  
 Road Design  
 ROW  
 Survey  
 Traffic Analysis

Traffic Signal Design  
 Transportation Planning  
 Erosion Control  
 Drainage

**BUXTON DRAFTING SERVICES****WBE****Contact:** LORI BUXTON**Address:** 4049 WILLISTON ROAD SUITE 2  
SOUTH BURLINGTON VT 05403**Tel:** 802 864 1833**Fax:** 802 864 6568**e-mail:** buxtonvt@aol.com**web site:** www.buxtonvt.com**Products and Services**

CADD Drafting

**C & C CONSULTING ENGINEERS, LLC****MBE****Contact:** PO-SHANG CHEN**Address:** 214 LINCOLN ST  
BOSTON MA 02134**Tel:** 617 254 6930**Fax:** 617 254 7631**e-mail:** po-shang.chen@cccellc.com**web site:** www.cccellc.com**Products and Services**

Bridge Design  
 Bridge Inspection  
 CADD Drafting  
 Civil Support Services  
 Environmental  
 Env't. Permitting

Road Design  
 Traffic Analysis  
 Traffic Signal Design  
 Transportation Planning  
 Underground Utility TV Ins

**CCSI, INC****WBE****Contact:** ANNE M. MOREAU**Address:** 62 PORTSMOUTH AVE  
STRATHAM NH 03855**Tel:** 603 778 8208**Fax:** 603 778 8941**e-mail:** anne@ccsiinc.com**web site:** www.ccsiinc.com**Products and Services**

CADD Drafting  
 Communication Services  
 IT Consulting  
 Technical Writing

Provide personnel in a contract basis

**CHANGE MANAGEMENT ASSOCIATES, INC.****WBE****Contact:** DONNA SPAULDING**Address:** 22 VILLAGE BROOK LANE  
DERRY NH 03038**Tel:** 603 437 6885**Fax:** 603 437 6885**e-mail:** dascodog@comcast.net**web site:****Products and Services**

Management and Business Administration Consulting

**COMPLIANCE U.S.A., INC****WBE****Contact:** RONNIE SANDLER**Address:** 131 SUGAR HILL RD  
EASTON NH 03580**Tel:** 603 823 7212**Fax:** 603 823 7212**e-mail:** compusa@localnet.com**web site:****Products and Services**

EEO/AA Programs

Consulting, training, and workshop in civil rights employment issues. Recruitment, hiring, and retention of female and minority employees.

**COMPREHENSIVE ENVIRONEMNTAL, INC.****WBE****Contact:** KAREN BLAKE**Address:** 21 DEPOT STREET  
MERRIMACK NH 03054**Tel:** 603 424 8444**Fax:** 603 424 8441**e-mail:** admin@ceiengineers.com**web site:****Products and Services**Environmental  
Site Preparation  
Excavation  
Subsurface Explorations  
Erosion Control  
Environmental Assesments

Stormwater Management

**CONCORD ENGINEERING GROUP, INC.****MBE****Contact:** BABAR M. KAHN**Address:** 23 OSGOOD STREET  
WINDHAM NH 03087**Tel:** 603 894 7038**Fax:** 775 262 7157**e-mail:** bkhan@concordengineeringgroup.com**web site:****Products and Services**CADD Drafting  
Civil Support Services  
Hydraulics  
Mapping  
Road Design  
ROWSurvey  
Traffic Signal Design  
Erosion Control  
Drainage

**CONLEY ASSOCIATES****WBE****Contact:** JENNIFER CONLEY**Address:** 214 CAMBRIDGE STREET  
BOSTON MA 02114**Tel:** 617 742 5111**Fax:** 617 742 5333**e-mail:** jconley@conleyassociates.com**web site:** www.ConleyAssociates.com**Products and Services**CADD Drafting  
Traffic Analysis  
Traffic Signal Design  
Transportation Planning**CORPORATE CONSTRUCTION LLC****DBE****Contact:** CANDICE HANCOCK**Address:** 133 NATICOOK ROAD  
MERRIMACK NH 03054**Tel:** 603 880 4781**Fax:** 603 595 2892**e-mail:** candicek221@msn.com**web site:****Products and Services**Construction Management  
Project Management  
Property Management

Coordinate subcontracts for project completion

**DMC ENGINEERING, INC****MBE****Contact:** DANIEL M CARSON**Address:** 63 FOUNTAIN STREET SUITE 30  
FRAMINGHAM MA 01702**Tel:** 508 872 8030**Fax:** 508 820 9523**e-mail:** dcarson@dmc-eng.com**web site:****Products and Services**Bridge Design  
Road Design  
Bridge Inspection  
CADD Drafting  
Civil Support Services  
Highway Lighting  
Humus**DRAWINGS UNLIMITED, LTD****WBE****Contact:** PATRICIA BERRY**Address:** 88 NASHUA RD BLDG B UNIT 3  
LONDONDERRY NH 03053**Tel:** 603 434 2780**Fax:** 603 434 2782**e-mail:****web site:****Products and Services**

CADD Drafting

Architectural graphics and computer aided drafting service

**E ANN POOLE****WBE****Contact:** E ANN POOLE**Address:** 479 NORTH STATE ST, F-2  
CONCORD NH 03301**Tel:** 603 230 9870**Fax:** 603 230 9870**e-mail:** eann@juno.com**web site:** www.eannpoole.com**Products and Services**

Environmental  
Envt. Permitting  
Envt. Wetlands  
Mapping  
Planning/Land Use Anal.  
Erosion Control

Ecological & risks assesment services. Environmental planning, natural areas management, restoration and enhacement, bio-stabilization

**EIGENSOFT, INC****MBE****Contact:** BOB SCHLICHER**Address:** 2064 WOODBURY AVE STE 204  
PORTSMOUTH NH 03801**Tel:** 603 430 8032**Fax:** 603 559 9351**e-mail:****web site:****Products and Services**

Software Services

Custom and consulting software development for large scale business and operational systems using the most advanced software technologies: J2EE,.NET, Intrusion detection, P2P, artificial and intelligence and mobil computing.

**ENGINEERING PARTNERS, INC****MWBE****Contact:** CHERYL HUIE**Address:** 144 GOULD STREET SUITE 160  
NEEDHAM MA 02494**Tel:** 781 444 4100**Fax:** 781 444 4015**e-mail:** epi@engpart.com**web site:** www.engpart.com**Products and Services**

|                         |                  |                         |
|-------------------------|------------------|-------------------------|
| Architctural            | Drainage         | Management Consulting   |
| Bridge Design           | Environmental    | Planning/Land Use Anal. |
| Bridge Inspection       | Envt. Wetlands   | Railroad Design         |
| CADD Drafting           | Highway Lighting | Road Design             |
| Construction Management | HVAC             | Site Inspection         |
| Civil Support Services  | Hydraulics       | Stormwater Managemen    |

Provide independent consultants to these and above disciplines. Technical Writing, Traffic Analysis, Traffic Signal Design, Transportation Planning, and Utility Lines

**ENVIROTECH ASSOCIATES, INC****WBE****Contact:** HELENA M HOLLAUER**Address:** 390 MIDDLE RD  
FALMOUTH ME 04105**Tel:** 207 781 5483**Fax:** 207 781 2291**e-mail:****web site:****Products and Services**

Borings  
Environmental  
Envt. Permitting  
Geotechnical  
Hazardous Materials

Petroleum remediation; and environmental site assesments

**EVENT BUILDERS, LLC****WBE****Contact:** MARCY WEEKS**Address:** 152 SEVERANCE ROAD  
MOULTONBOROUGH NH 03254**Tel:** 603 544 2218**Fax:** 603 544 2217**e-mail:** eventz@worldpath.net**web site:** www.eventbuilders.com**Products and Services**Management Consulting  
Marketing Services**FITZGERALD & HALLIDAY, INC****WBE****Contact:** A RUTH FITZGERALD**Address:** 72 CEDAR STREET  
HARTFORD CT 06106**Tel:** 860 247 7200**Fax:** 860 247 7206**e-mail:** rfitzgerald@fhiplan.com**web site:** www.fhiplan.com**Products and Services**Environmental  
Envt. Permitting  
Envt. Noise & Air  
Envt. Wetlands  
Historical  
Planning/Land Use Anal.Public Participation  
Technical Writing  
Traffic Analysis  
Traffic Signal Design  
Transportation Planning**FORNATARO, LOUANN R.A., P.A..****WBE****Contact:** LOUANN FORNATARO**Address:** 207 MAIN STREET SUITE 8  
NASHUA NH 03060**Tel:** 603 882 1115**Fax:** 603 882 1115**e-mail:** fornataro\_architecture@empire.net**web site:****Products and Services**Architectural  
Contract Interiors  
Code Consultation  
Building Evaluation**G PLUS G ARCHITECTS, INC.****WBE****Contact:** DENISE DEA**Address:** 281 SUMMER STREET  
BOSTON MA 02210**Tel:** 617 451 2888**Fax:** 617 451 0660**e-mail:** cgander@gplusgarchitects.ocm**web site:** www.gplusgarchitects.com**Products and Services**Architectural  
CADD Drafting  
Transportation Planning

Specializes in architecture and planning for the transportation sector including light rail, rail, busses air, rental cars, parking garages and maintenance facilities.

**GEOTEK ENGINEERING, INC****WBE****Contact:** JULIA SIGALOVSKY**Address:** 15 BEULAH ST F-2  
FRAMINGHAM MA 01701**Tel:** 508 872 8495**Fax:** 508 872 8911**e-mail:** julia@geotek-eng.com**web site:** www.geotek-eng.com**Products and Services**

Borings  
Environmental  
Envt. Noise & Air  
Geotechnical  
Hazardous Materials

**GM2 ASSOCIATES, INC****MBE****Contact:** MADAN M GUPTA**Address:** 730 HEBRON AVE  
GLASTONBURY CT 06033**Tel:** 860 659 1416**Fax:** 860 657 2926**e-mail:** madan.gupta@gm2inc.com**web site:** www.gm2inc.com**Products and Services**

Bridge Design  
Bridge Inspection  
CADD Drafting  
Civil Support Services  
Highway Lighting  
Hydraulics

Road Design  
Survey  
Traffic Analysis  
Traffic Signal Design

Structure designing; highway facility design; and building design

**GREEN INTERNATIONAL AFFILIATES INC****MBE****Contact:** DIPAK KHAUND**Address:** 407 REAR MYSTIC AVE UNIT 25  
MEDFORD MA 02155**Tel:** 781 391 5757**Fax:** 781 391 8889**e-mail:** info@greenintl.com**web site:** www.greenintl.com**Products and Services**

Architectural  
Bridge Design  
Envt. Permitting  
Hydraulics  
Public Participation  
Road Design

ROW  
Stormwater Management  
Survey  
Traffic Analysis  
Traffic Signal Design  
Transportation Planning

Water lines  
Sewer Lines

**H2O ENGINEERING CONSULTING ASSOCIATES, INC.****MBE****Contact:** EDWARD T.T. CHIANG**Address:** 2 ALFRED CIRCLE  
BEDFORD MA 01730**Tel:** 781 275 7714**Fax:** 781 275 7604**e-mail:** h2oeng275@aol.com**web site:****Products and Services**

Drainage  
Flood Control  
Envt. Permitting  
Civil Support Services



**HAGER GEOSCIENCE, INC****WBE****Contact:** JUTTA L HAGER**Address:** 596 MAIN STREET  
WOBURN MA 01801**Tel:** 781 935 8111**Fax:** 781 935 2717**e-mail:** hgi@hagergeoscience.com**web site:** www.hagergeoscience.com**Products and Services**Archaeological  
Environmental  
Geotechnical  
Mapping

Geophysical investigations

**HAGER-RICHTER GEOSCIENCE, INC****WBE****Contact:** DOROTHY RICHTER**Address:** 8 INDUSTRIAL WAY - D10  
SALEM NH 03079**Tel:** 603 893 9944**Fax:** 603 893 8313**e-mail:** dorothy@hager-richter.com**web site:** www.hager-richter.com**Products and Services**

Survey

Geophysical and geological investigations, including surface and borehole;  
integration of geophysical and geological data.**HARTGEN ARCHAEOLOGICAL ASSOCIATES, INC****WBE****Contact:** KAREN HARTGEN**Address:** 1744 WASHINGTON AVENUE EX  
RENSSELAER NY 12144**Tel:** 518 283 0534**Fax:** 518 283 6276**e-mail:** hartgen@hartgen.com**web site:** www.hartgen.com**Products and Services**Archaeological  
Historical

Cultural resources services; architectural history

**HIGHDATA SOFTWARE CORP****MBE****Contact:** SENRAJ SOUNDARARAJAN**Address:** 87 STILES ROAD SUITE 204  
SALEM NH 03079**Tel:** 603 890 1251**Fax:** 603 890 1276**e-mail:** ssoundar@highdata.com**web site:** www.highdata.com**Products and Services**IT Consulting  
Computer Programming  
Software ServicesWeb and wireless enabling existing applications. Software, Database, Platform  
conversion/re-engineering. Longterm maintenance & support. Fixed cost and  
timeline with quick project turnaround

**HOWARD STEIN HUDSON ASSOCIATES, INC****WBE****Contact:** BETH CHESTER-LAMPRON**Address:** 38 CHAUNCY ST, F-9  
BOSTON MA 02111**Tel:** 617 482 7080**Fax:** 617 482 7417**e-mail:** info@hshassoc.com**web site:** www.hshassoc.com**Products and Services**

Env't. Permitting  
 Management Consulting  
 Planning/Land Use Anal.  
 Public Participation  
 Traffic Analysis  
 Transportation Planning

**HOWE SURVEYING ASSOCIATES, INC****WBE****Contact:** JENNIFER CAPALDO**Address:** 73 PRINCETON STREET SUITE 3  
NORTH CHELMSFORD MA 01863**Tel:** 978 251 3132**Fax:** 978 251 0509**e-mail:** jcapaldo@howesurveying.com**web site:** www.howesurveying.com**Products and Services**

Mapping  
 ROW  
 Survey  
 Civil Support Services  
 Drainage  
 Erosion Control

Sewer Lines  
 Site Inspection  
 Stormwater Management  
 Water lines

**INDEPENDENT ARCHAEOLOGICAL CONSULTING, LLC****WBE****Contact:** KATHLEEN WHEELER**Address:** 97 MORNING STREET  
PORTSMOUTH NH 03801**Tel:** 603 431 8397**Fax:** 603 430 2971**e-mail:** kwheeler@indepdentarchaeology.com**web site:****Products and Services**

Archaeological

**IVESIA SOLUTIONS, INC.****MBE****Contact:** SENRAJ SOUNDARARAJAN**Address:** 87 STILES ROAD SUITE 204  
SALEM NH 03079**Tel:** 603 890 1010**Fax:** 603 890 1276**e-mail:** ssoundar@ivesia.com**web site:****Products and Services**

IT Consulting  
 Computer Programming  
 Software Services

Web and wireless enabling existing application; platform conversion/re-engineering;  
 fixed cost and timeline with quick turnaround

**JBC ASSOCIATES, INC**

WBE

**Contact:** JANET CUNNINGHAM**Address:** 583 SHOEMAKER RD STE 230  
KING OF PRUSSIA PA 19406**Tel:** 610 992 9090**Fax:** 610 992 9099**e-mail:** info@jbcassociates.com**web site:** www.jbcassociates.com**Products and Services**Construction Management  
CPM Scheduling

Estimating, inspection, and disputes resolution

**KAY NORDSTROM ENGINEERING, INC**

WBE

**Contact:** KAY NORDSTROM**Address:** 11 HATHORNE STREET SUITE 2  
SALEM MA 01970**Tel:** 978 594 5086**Fax:** 978 594 5086**e-mail:** kay.nordstrom@comcast.net**web site:****Products and Services**Public Transportation  
Engineering Services  
Project Management**KEVILLE ENTERPRISES, INC**

WBE

**Contact:** BERNADETTE CARROLL**Address:** 475 SCHOOL STREET SUITE 11  
MARSHFIELD MA 02050**Tel:** 781 837 3884**Fax:** 781 837 4091**e-mail:** bcarroll@keville.com**web site:** www.keville.com**Products and Services**Construction Management  
Site Inspection**KFH GROUP, INC**

WBE

**Contact:** SUE KNAPP**Address:** 4920 ELM STREET SUITE 350  
BETHESDA MD 20814**Tel:** 301 951 8660**Fax:** 301 951 0026**e-mail:** KFHGROUP@AOL.COM**web site:****Products and Services**

Transportation Planning

**KKO & ASSOCIATES, LLC****WBE****Contact:** KATHERINE O'NEIL**Address:** TWO DUNDEE PARK, 3 FLOOR  
ANDOVER MA 01810**Tel:** 978 475 4079**Fax:** 978 475 6526**e-mail:** smason@kko.com**web site:** kko.com**Products and Services**Management Consulting  
Transportation Planning

Transportation system analysis

**KM CHNG ENVIRONMENTAL, INC****MBE****Contact:** ERIKA SHATTUCK PARTON**Address:** 25 MALL ROAD  
BURLINGTON MA 01803**Tel:** 781 272 4060**Fax:** 781 272 8867**e-mail:** eshattuckparton@kmchnng.com**web site:** www.kmchnng.com**Products and Services**Environmental  
Envt. Noise & Air  
Vibration Monitoring  
Engineering Services**LANIER ENVIRONMENTAL CONSULTANTS, INC.****WBE****Contact:** JANET LANIER**Address:** PO BOX 241562, 140 MARKET PLA  
MONTGOMERY AL 36124**Tel:** 334 396 4004**Fax:** 334 396 4011**e-mail:** jlanier@lecllc.com**web site:****Products and Services**Environmental  
Envt. Noise & Air  
Envt. Wetlands  
Hazardous Materials  
Historical  
Management ConsultingPlanning/Land Use Anal.    Transportation Planning  
Public Participation  
Remediation  
Socio-Economic Studies  
Stormwater Management  
Technical Editing**LEVY ENGINEERING, INC****WBE****Contact:** JANET LEVY**Address:** 5 SPAULDING ST  
CONCORD NH 03301**Tel:** 603 224 5747**Fax:** 603 224 5747**e-mail:** levy@tiac.net**web site:****Products and Services**Environmental  
Envt. Permitting  
Hydraulics

Water supply engineering

**LIN ASSOCIATES INC****MBE****Contact:** ROBERT S. T. LIE**Address:** 2001 BEACON ST STE 310  
BRIGHTON MA 02135**Tel:** 617 566 4216**Fax:** 617 566 6038**e-mail:** rlie@linboston.com**web site:****Products and Services**Civil Engineering  
Structural  
Architectural  
consulting Services**LITTLE RIVER SURVEY CO, LLC****WBE****Contact:** PATRICIA S KULES**Address:** P.O. BOX 1208  
STOWE VT 05672**Tel:** 802 253 8214**Fax:** 802 253 2269**e-mail:** trill@pwshift.com**web site:****Products and Services**CADD Drafting  
Civil Support Services  
Environmental  
Erosion Control  
Hazardous Materials  
Mapping

Survey

**M & R CONSULTANTS CORP****MBE****Contact:** ANIL SHAH**Address:** 165 BEDFORD ST SUITE 9  
BURLINGTON MA 01803**Tel:** 781 273 5050**Fax:** 781 273 5051**e-mail:****web site:****Products and Services**

Software Services

Computer system network management

**MARLEY ENVIRONMENTAL, INC****WBE****Contact:** MARTHA LEMMON**Address:** P.O. BOX 2060  
WESTPORT CT 06880**Tel:** 203 831 0123**Fax:** 203 838 6410**e-mail:** mlemmon@marleyenvironmental.com**web site:** www.marleyenvironmental.com**Products and Services**Environmental  
Envt. Permitting

Environmental due diligence assessments and investigations of proposed/existing transportation corridors and intersections.

**MELINA/HYLAND DESIGN GROUP, LLC****WBE****Contact:** CATHERINE MELINA**Address:** 4 OXBOW FARM ROAD  
STRATHAM NH 03885**Tel:** 603 772 0590**Fax:** 603 772 0599**e-mail:** jrh@melina-hyland.com**web site:****Products and Services**

Landscape Architecture

**MITKEM CORP****WBE****Contact:** PAUL A. SENEAL**Address:** 175 METRO CENTER BLVD  
WARWICK RI 02886**Tel:** 401 732 3400**Fax:** 401 732 3499**e-mail:** pauls@mitkem.com**web site:** www.mitmkm.com**Products and Services**Environmental Testing  
EPA , CLP**NATCOM, INC****MBE****Contact:** SHALIN PATEL**Address:** 5 TSIENNETO ROAD SUITE 86  
DERRY NH 03038**Tel:** 603 437 2166**Fax:** 781 207 0073**e-mail:** shalin\_patel@natcom.cc**web site:** www.natcom.cc**Products and Services**CADD Drafting  
HVAC  
Software Services  
Stormwater Management  
Computer Programming  
System Docs. Support

Technical Editing

Control Systems for Water/Sewer Stations, Tunnel Ventilation Control Systems,  
Factory Automation. Building Automation Systems, Provide Custom Programming  
Services for Automation and Communication Systems**NOBIS ENGINEERING, INC****MBE****Contact:** KEN KOORNNEEF**Address:** 18 CHENELL DRIVE  
CONCORD NH 03301**Tel:** 603 224 4182**Fax:** 603 224 2507**e-mail:** info@nobisengineering.com**web site:** www.nobisengineering.com**Products and Services**Architectural  
Borings  
Bridge Design  
CADD Drafting  
Civil Support Services  
EnvironmentalEnvt. Permitting  
Envt. Wetlands  
Erosion Control  
Geotechnical  
Hazardous Materials  
HydraulicsPlanning/Land Use Anal.  
Road Design  
ROW

**PRESERVATION COMPANY****WBE****Contact:** LYNNE E. MONROE**Address:** 5 HOBBS ROAD  
KENSINGTON NH 03833**Tel:** 603 778 1799**Fax:** 603 788 1960**e-mail:** preservationco@comcast.com**web site:****Products and Services**Environmental  
Historical**PROMATECH, INC****WBE****Contact:** YVETTE STREAHLE**Address:** 302 NEW JERSEY AVE  
RIVERSIDE NJ 08075**Tel:** 856 461 3663**Fax:** 856 461 3996**e-mail:****web site:****Products and Services**Construction Management  
CPM Scheduling

Cost estimating

**QUANTUM CONSTRUCTION CONSULTANTS, LLC****WBE****Contact:** LISA MARTIN**Address:** 27 LOCKE ROAD  
CONCORD NH 03301**Tel:** 603 224 0859**Fax:** 603 224 3625**e-mail:** Lmartin@quantum-cc.com**web site:** www.quantum-cc.com**Products and Services**

|                         |                         |                         |
|-------------------------|-------------------------|-------------------------|
| Architectural           | Environmental           | Site Inspection         |
| Bridge Design           | Erosion Control Plans   | Stormwater Management   |
| Bridge Inspection       | HVAC                    | Traffic Analysis        |
| Civil Support Services  | Hydraulics              | Traffic Signal Design   |
| Construction Management | Planning/Land Use Anal. | Transportation Planning |
| Drainage                | Road Design             |                         |

**RESOURCE LABORATORIES, LLC****WBE****Contact:** SUE SYLVESTER**Address:** 124 HERITAGE AVE  
PORTSMOUTH NH 03801**Tel:** 603 436 2001**Fax:** 603 430 2100**e-mail:** sues@reslabs.com**web site:****Products and Services**

Environmental

**RLS AND ASSOCIATES, INC****WBE****Contact:** ROBBIE SARLES**Address:** 3131 S DIXIE HWY STE 545  
DAYTON OH 45439**Tel:** 937 299 5007**Fax:** 937 299 1055**e-mail:****web site:****Products and Services**

Transportation Planning

Provides transportation management and operations consulting services to transportation providers throughout the United States

**RUMNEY ASSOCIATES****WBE****Contact:** MARY ANN RUMNEY**Address:** 82 BRADLEY ROAD  
MADISON CT 06443**Tel:** 203 245 7046**Fax:** 203 245 4207**e-mail:** rumney@snet.net**web site:****Products and Services**

CADD Drafting

Graphic Design

**SHERMAN GREINER HALLE, LTD****WBE****Contact:** PATRICIA SHERMAN**Address:** 27 WARREN STREET  
CONCORD NH 03301**Tel:** 603 225 0640**Fax:** 603 225 0621**e-mail:** info@sghltd.com**web site:** www.sghltd.com**Products and Services**Architectural  
CADD Drafting  
Landscape Architecture  
Land Use Planning**SMART ASSOCIATES, ENVIRONMENTAL CONSULTANTS, INC****WBE****Contact:** MELISSA SMART**Address:** 72 NORTH MAIN STREET  
CONCORD NH 03301**Tel:** 603 224 7550**Fax:** 603 224 7890**e-mail:** info@smartenvironmental.com**web site:** www.smartenvironmental.com**Products and Services**Environmental  
Envt. Permitting  
Envt. Wetlands  
Erosion Control  
Hazardous Materials  
NPDES PermittingStormwater Management  
Environmental Assessments  
NEPA Documentation



**SNOWDEN ENVIRONMENTAL SERVICES****WBE****Contact:** SUZANNE SNOWDEN**Address:** PO BOX 68  
YARMOUTH ME 04096**Tel:** 207 865 0936**Fax:** 207 865 0936**e-mail:** SnowdenEnvSvs@aol.com**web site:****Products and Services**

Environmental  
Civil Support Services  
Env't. Noise & Air  
Env't Wetlands  
Erosion Control  
Geotechnical

Hazardous Materials  
Planning/Land Use Anal.  
Public Participation  
Real Estate Services  
Remediation  
Site Inspection

Socio-Economic Studies  
Stormwater Managemen  
Transportation Planning  
Technical Writing

**SOFTWARE EVOLUTION, INC.****WBE****Contact:** SANDRA IERARDI**Address:** 9 HIGH MEADOW LANE  
AMHERST NH 03031**Tel:** 603 672 3993**Fax:** 603 672 3993**e-mail:** sierardi@yahoo.com**web site:****Products and Services**

IT Consulting  
Software Services

**SOFTWARE TECHNOLOGY INTERNATIONAL****MBE****Contact:** PARAMASIVA N. MUTHUVELRA**Address:** 427 AMHERST STREET SUITE 8  
NASHUA NH 03063**Tel:** 603 881 3033**Fax:** 603 886 5839**e-mail:** sti@stic.com**web site:** www.stic.com**Products and Services**

Software Services  
Computer Programming

**STEPHANIE LAHAR AND ASSOCIATES****WBE****Contact:** STEPHANIE LAHAR**Address:** 11 DEWEY STREET  
MONTPELIER VT 05602**Tel:** 802 223 2485**Fax:** 802 223 7311**e-mail:** stephanie.lahar@verizon.net**web site:** www.stephanielahar.com**Products and Services**

Management Consulting  
Public Participation

Strategic Planning and Collaborative Decision-Making Processes

**STEPHENS ASSOCIATES****WBE****Contact:** BETHEL STEPHENS**Address:** 60 NORTHRUP DRIVE  
BRENTWOOD NH 03833**Tel:** 603 772 1417**Fax:** 603 772 1418**e-mail:** info@stephensengineers.com**web site:** www.stephensengineers.com**Products and Services**Geotechnical  
Structural  
Seismic Consulting**STONEHILL ENVIRONMENTAL, INC****WBE****Contact:** ELISSA H STONE**Address:** 600 STATE STREET SUITE 2  
PORTSMOUTH NH 03801**Tel:** 603 433 1935**Fax:** 603 433 1942**e-mail:** estone@stonehillenvironmental.com**web site:** www.stonehillenvironmental.com**Products and Services**Borings  
Environmental  
Remediation  
Environmental Assessments  
Site Investigation  
Site RemediationEnv. Due Diligence  
Insurance Claim Mngt  
Litigation Support  
NEPA Documentation  
Water Resource Services

Brownfields redevelopment services; Underground/Abobeground tank audit; Health and Safety Plan Preparation; closure and SPCC Plans

**STRATA MANAGEMENT & CONSULTING PLLC****WBE****Contact:** LINDA FALK**Address:** ONE NEW HAMPSHIRE AVENUE  
PORTSMOUTH NH 03801**Tel:** 603 497 5457**Fax:** 603 497 5409**e-mail:** lsfalk@stratamgmt.com**web site:** www.stratamgmt.com**Products and Services**Environmental  
Environmental Testing  
Envt. Noise & Air  
Envt. Permitting  
Hazardous Materials  
Site InspectionMapping  
Planning/Land Use Anal.  
Public Participation  
Remediation  
Topographic**SULLIVAN CREATIVE SERVICES LTD****WBE****Contact:** PAMELA SULLIVAN**Address:** 241 GRAPEVINE ROAD  
DUNBARTON NH 03046**Tel:** 603 774 0836**Fax:** 617 926 8615**e-mail:** psullivan@sullivancr.com**web site:** www.sullivancreative.com**Products and Services**Graphic Design  
Advertising Services  
Marketing Services

GRAPHIC DESIGN and ADVERTISING

**SUSANNE SMITH MEYER LANDSCAPE ARCHITECT****WBE****Contact:** SUSANNE SMITH MEYER**Address:** 14 SHAWMUT STREET  
CONCORD NH 03301**Tel:** 603 226 3313**Fax:** 603 226 3313**e-mail:** ssmla@comcast.net**web site:****Products and Services**Landscape Architecture  
Site Planning  
Planting Plans**SYMBIOSYS SOLUTIONS, INC.****WBE****Contact:** JYOTHI SHANKER**Address:** 1 HADLEY DRIVE  
NASHUA NH 03062**Tel:** 603 880 7771**Fax:** 603 595 4855**e-mail:** Jyothi@Symbiosysinc.com**web site:** www.symbiosysinc.com**Products and Services**Software Services  
IT Consulting  
Computer Programming**TECHEDIT SERVICES****WBE****Contact:** CONSTANCE G BURT**Address:** P.O. BOX 333  
LISBON FALLS ME 04252**Tel:** 207 353 6011**Fax:****e-mail:** techedit@gwi.net**web site:****Products and Services**Proofreading  
Technical Editing**THE HEARTLAND CONSORTIUM, INC****MWBE****Contact:** VERNI NERREN**Address:** PO BOX 9080  
CANTON OH 44711**Tel:** 330 452 3492**Fax:** 330 455 3913**e-mail:** heartland@valkyrie.net**web site:****Products and Services**Environmental  
Management Consulting  
Marketing Services  
Real Estate Services  
ROW

Right of Way consultant handling titles, closings, negotiations and value analysis on acquisitions from railroads and corporations.

**THIRD SECTOR ASSOCIATES****WBE****Contact:** DIANE MEYERHOFF**Address:** 207 PARK STREET SUITE 1  
BURLINGTON VT 05401**Tel:** 802 865 1794**Fax:** 802 660 4881**e-mail:** dianemeyerhoff@cs.com**web site:****Products and Services**

Management Consulting  
Marketing Services  
Planning/Land Use Anal.  
Public Participation  
Socio-Economic Studies  
Transportation Planning

**TRAFINFO COMMUNICATIONS, INC****MBE****Contact:** SUDHIR MURTHY**Address:** 209 LOWELL STREET  
LEXINGTON MA 02420**Tel:** 781 710 5380**Fax:** 781 863 0051**e-mail:** smurthy@trafinfo.com**web site:** www.trafinfo.com**Products and Services**

IT Consulting  
Transportation Planning

Wireless data transmitters, internet-based telemetry products and services, and transportation consulting services.

**TRANSACTION ASSOCIATES, INC****WBE****Contact:** CYNTHIA FRENE**Address:** 709 MAIN STREET  
WALTHAM MA 02415**Tel:** 781 895 1100**Fax:** 781 895 1122**e-mail:** cfrene@transactionassoc.com**web site:** www.transactionassoc.com**Products and Services**

Marketing Services  
Public Participation  
Survey  
Technical Writing  
Transportation Planning

Transportation services (shuttles)

**TRANSIT SAFETY MANAGEMENT****WBE****Contact:** SUSAN MADIGAN**Address:** ONE EAST MAIN STREET  
GEORGETOWN MA 01833**Tel:** 978 352 4877**Fax:** 978 352 7366**e-mail:** trains@tiac.net**web site:****Products and Services**

Transportation Planning

Railroad safety; regulatory compliance and capacity, and schedule planning

**TRANSMART TECHNOLOGIES, INC****MBE****Contact:** JING (CONNIE) LI**Address:** 2802 COHO STREET SUITE 102  
MADISON WI 53713**Tel:** 608 273 4740**Fax:** 608 273 4783**e-mail:** connie@trafficonline.com**web site:** www.trafficonline.com**Products and Services**

Civil Support Services  
IT Consulting  
Planning/Land Use Anal.  
Traffic Analysis  
Traffic Signal Design  
Transportation Planning

**UNITED INTERNATIONAL CORP****MBE****Contact:** BANGALORE P NEELAKANTIAH**Address:** 821 NORTH MAIN STREET EXT  
WALLINGFORD CT 06492**Tel:** 203 269 2993**Fax:** 203 269 4395**e-mail:** UnitedIntl@aol.com**web site:****Products and Services**

Civil Support Services  
Environmental  
Road Design  
Bridge Design  
Bridge Inspection  
Utility Design  
Dams

Construction Management  
CADD Drafting  
Survey

**VAIDYA CONSULTANTS, INC****MBE****Contact:** SURENDRA R VAIDYA**Address:** 226 LOWELL STREET UNIT B-9  
WILMINGTON MA 01887**Tel:** 978 657 7121**Fax:** 978 658 5967**e-mail:** vci@netway.com**web site:****Products and Services**

CADD Drafting  
Civil Support Services  
Environmental  
Envt. Permitting  
Envt. Wetlands  
Erosion Control

**VERMONT SURVEY & ENGINEERING, INC****WBE****Contact:** KATHLEEN HOWE**Address:** 79 RIVER ST STE 301  
MONTPELIER VT 05602**Tel:** 802 229 9138**Fax:** 802 229 9130**e-mail:** vtsurvey@aol.com**web site:****Products and Services**

CADD Drafting  
ROW  
Survey

**ALL DIRECTIONS TRAFFIC**

DBE

**Contact:** RICKY DUVAL**Address:** PO BOX 625  
LYMAN ME 04002**Tel:** 207 266 0162**Fax:** 207 255 6332**e-mail:** ricky\_L\_duval@yahoo.com**web site:**

Products and Services

Traffic Data Collection

**ALTERNATE TRANSIT ADVERTISING, INC**

WBE

**Contact:** JANE CUTTER**Address:** 295 BAYSIDE ROAD  
GREENLAND NH 03840**Tel:** 603 436 0008**Fax:** 603 766 0287**e-mail:** jmarlowcutter@earthlink.net**web site:** www.ata.bz

Products and Services

Marketing Services

Specialized in advertising and marketing- brochures, newsletters, promotional pieces. Transit advertising sales for public transportation systems

**B & B OFFSET PRINTING COMPANY**

DBE

**Contact:** MICHELLE ROBBINS**Address:** PO BOX 1346  
DOVER NH 03821**Tel:** 603 749 2839**Fax:** 603 749 1349**e-mail:** michelle@bbprintco.com**web site:**

Products and Services

Printing

**BENCHMARK OFFICE SYSTEMS, INC**

WBE

**Contact:** MICHELLE MCMANUS**Address:** 58 RANGE ROAD  
WINDHAM NH 03087**Tel:** 603 890 2474**Fax:** 603 890 2436**e-mail:** mmcmanus@benchmark-office.com**web site:** www.benchmark-office.com

Products and Services

Office Equipment

**CJP ENTERPRISES**

DBE

**Contact:** JANET BUTLER**Address:** 61 ACCORD PARK DRIVE  
NORWELL MA 02061**Tel:** 781 982 5210**Fax:** 781 982 5211**e-mail:** cjpsigns@aolc.om**web site:** www.cjpsigns.com**Products and Services**

Union Sign Manufacturing and Installation

**COMPUSIST**

WBE

**Contact:** MARIA HAYDOCK**Address:** P.O. BOX 206  
EXETER NH 03833**Tel:** 603 778 2506**Fax:** 603 778 2997**e-mail:** compusist@comcast.net**web site:****Products and Services**Computer Products  
Office Supplies  
Software Services  
Information Services  
Bookkeeping Services

Programmable Logic Controls (PLC)

**COPY EXPRESS, INC**

WBE

**Contact:** LINDA CHURCH**Address:** 931 ELM ST  
MANCHESTER NH 03101**Tel:** 603 625 4960**Fax:** 603 647 0833**e-mail:** copy@copyexpress.com**web site:** www.copyexpress.com**Products and Services**

Printing

Digital photocopying, business cards, binding, laminating, foam core mounting,  
computer graphics, typesetting, and personalized merchandise**DURKEE PERSONNEL**

WBE

**Contact:** GAIL DURKEE GARRIGAN**Address:** PO BOX 54  
NORTH HAMPTON NH 03862**Tel:** 603 964 7183**Fax:** 603 964 7185**e-mail:** info@durkeepersonnel.com**web site:** www.durkeepersonnel.com**Products and Services**

Placement Agency

Temporary or permanent placement agency

## EXCLUSIVE AIR, INC

WBE

**Contact:** HOLLY WHITAKER

**Address:** 99 PINE HALL RD  
NASHUA NH 03063

**Tel:** 603 882 8400

**Fax:** 603 882 7252

**e-mail:** holly@exclusive-air.com

**web site:** www.exclusive-air.com

### Products and Services

Air Transportation

Provide executive charters on corporate aircraft

## FAMM STEEL, INC.

WBE

**Contact:** ANN GAVIN

**Address:** 97 HUNT HILL RD PO BOX 98  
RINDGE NH 03461

**Tel:** 603 899 3304

**Fax:** 603 899 6607

**e-mail:** agavin@fammsteel.com

**web site:** www.fammsteel.com

### Products and Services

Metal Fabrication  
Shotblasting  
Structural Painting  
Welding

## INNOVATIVE RESOURCE GROUP

WBE

**Contact:** JOANNE MASELLI-IRVING

**Address:** 27 WATER STREET SUITE 410  
WAKEFIELD MA 01880

**Tel:** 781 224 3400

**Fax:** 781 224 3454

**e-mail:** sales@innovativeresource.com

**web site:** www.innovativeresource.com

### Products and Services

Business Forms  
Printing  
Promotional Services

Single source or commercial printing. Promotional products and corporate apparel: stationery packages, brochures, business forms, invitations, annual reports, newsletters

## MACDONALD MICRO INTERNATIONAL, LTD

WBE

**Contact:** LAURIE MACDONALD

**Address:** 89 INDUSTRIAL PARK ROAD  
DOVER NH 03820

**Tel:** 603 742 3350

**Fax:** 603 742 3356

**e-mail:** laurie@mac-micro.com

**web site:**

### Products and Services

Computer Products  
Office Equipment  
Office Supplies  
Toner Supplier

MMI is a computer reseller with access to over 280,000 parts and from 1700 different manufacturers. Can drop ship directly from our inventory or our distributors' inventories all over the world.



**MOSAIC MEDIATION, LLC****WBE****Contact:** ELIZABETH CHRISTENSEN**Address:** 25 INDIAN ROCK ROAD SUITE 2  
WINDHAM NH 03087**Tel:** 603 635 1240**Fax:** 603 635 2545**e-mail:** eac@MosaicMediation.com**web site:** www.MosaicMediation.com**Products and Services**

Mediation Services

Alternative Dispute Resolution for businesses, divorce, construction and property, interpersonal relationships, work practices, etc.

**NATIONAL ENVIRONMENTAL SYSTEMS, INC****WBE****Contact:** PIXIE TERREAU**Address:** 36 MAPLE AVE  
SEEKONK MA 02771**Tel:** 508 761 6611**Fax:** 508 761 6898**e-mail:** nes@aol.com**web site:****Products and Services**

Soil Remediation Equipment

Manufacturer/assembler of groundwater and soil remediation equipment (air strippers, controls, dual phase extraction systems)

**NOVA ELECTRONICS DATA, INC****MBE****Contact:** NATHAN ANDERSON**Address:** 77 GILCREST RD  
LONDONDERRY NH 03053**Tel:** 603 432 1555**Fax:** 603 432 0542**e-mail:** nanderson@nova-data.com**web site:** www.nova-data.com**Products and Services**

Communication Services

Provide solutions to voice and data communications

**ONE STOP COMPUTER SERVICES****MBE****Contact:** STEPHEN CHEN**Address:** 6 ALAN CIRCLE  
LONDONDERRY NH 03053**Tel:** 603 425 0081**Fax:** 603 425 0092**e-mail:** onestopcomputer@aol.com**web site:** www.oscs.ws**Products and Services**

Computer Products

**ONEIDA SALES AND SERVICES****MBE****Contact:** FRED SAIA**Address:** 1951 HAMBURG TPKE  
LACKAWANNA NY 14218**Tel:** 716 822 8205**Fax:** 716 897 3425**e-mail:****web site:****Products and Services**Concrete Products  
Fence Products  
Structural Steel Supplies**ONSITE COMMUNICATIONS, INC****WBE****Contact:** MARY CANDELIERI**Address:** 24 GRACE DRIVE  
NASHUA NH 03062**Tel:** 603 882 7391**Fax:** 603 598 5228**e-mail:** mcandelieri@onsitecomm.com**web site:****Products and Services**

Communication Services

Telecom Training and Related Services

**PALLADIUM SUPPLY COMPANY, INC****WBE****Contact:** KAREN ALEXANDER**Address:** 27 NORWOOD STREET #354  
EVERETT MA 02149**Tel:** 800 980 0231**Fax:** 617 887 0003**e-mail:****web site:****Products and Services**Electrical Supplies  
Construction Materials  
Rebar Materials  
Plumbing Supplies  
Structural Steel Supplies

Furnish and install structural steel

**PROGRESSIVE ELECTRICAL SERVICES****DBE****Contact:** BRAD MURPHY**Address:** 74R DINATALE DRIVE  
DURHAM CT 06422**Tel:** 860 349 8144**Fax:** 860 349 6329**e-mail:** bmurphy@pe-service.com**web site:****Products and Services**

Electrical Supplies

Electrical Supplies, i.e. Wire Conduit, Circuit Breakers, Light Bulbs, Lighting  
Fixtures, Poles, Hardware, etc.

**REAL POWER, INC.****WBE****Contact:** AMANDA BOROZINSKI**Address:** 25 BIRCH DRIVE  
RINDGE NH 03461**Tel:** 603 231 7354**Fax:****e-mail:** realpowerab@hotmail.com**web site:****Products and Services**

Electrical

Installation, maintenance, and service for UPS equipment, battery backup systems. Any power quality systems, IT rooms/departments, buildings, turn-key installation.

**SEACOAST MASONRY SUPPLY****WBE****Contact:** SARA MAHONEY**Address:** 60 MINNESOTA AVE  
WORWICK RI 02888**Tel:** 401 736 0011**Fax:** 401 736 8886**e-mail:** sms0011@msn.com**web site:****Products and Services**

Concrete Products

Supplier of bricks, architectural block, flashing, insulation, wire, cleaning products, and masonry/concrete accessories

**SHAWNTECH COMMUNICATIONS, INC****MBE****Contact:** LANCE FANCHER**Address:** ONE ASET CENTRE SUITE 102  
VANDALIA OH 45377**Tel:** 937 898 4724**Fax:** 937 898 4447**e-mail:** info@shawntech.com**web site:** www.shawntech.com**Products and Services**

Communication Services

Telephone communications, communications services NEC, computers/computer peripheral equipment/software, electronic parts/equipment NEC, computer integrated systems design, computer related services NEC

**SOEDER ASSOCIATES, LLC****WBE****Contact:** LISA P SOEDER**Address:** 241 ASYLUM STREET SUITE 700  
HARTFORD CT 06103**Tel:** 860 246 1600**Fax:** 860 246 1700**e-mail:** lsoeder@soeder-associates.com**web site:** www.soeder-associates.com**Products and Services**

Legal Services

Legal services: bond, special tax and trustee counsel services in municipal and corporate finance transaction

**STAGHORN RECYCLING, LLC****WBE****Contact:** NANCY BUNCE**Address:** 367 YE OLDE CANTERBURY ROAD  
NORTHWOOD NH 03261**Tel:** 603 942 8699**Fax:** 603 942 8699**e-mail:** NABUNCE505@METROCAST.NET**web site:****Products and Services**

Recycling, Paper/Scrap Broker

**STAY SAFE TRAFFIC PRODUCTS****WBE****Contact:** CATHERINE SCHOENENBERGER**Address:** 38 LOWELL ROAD  
WESTFORD MA 01886**Tel:** 978 692 2114**Fax:** 978 692 7900**e-mail:** StaySafeTraffic@aol.com**web site:****Products and Services**

Traffic Signs

Posts, Safety Equipment and Apparel for Work Zone, Brackets, Pavement Markings, and Connecting Hardware

**THE COMPLETE ERRAND****WBE****Contact:** LYNN SUDLOW**Address:** 7 VILLAGE GREEN  
WEST LEBANON NH 03784**Tel:** 603 298 6129**Fax:** 603 298 5290**e-mail:** savetime@completeerrand.com**web site:** www.completeerrand.com**Products and Services**Assistance Services  
Errands

delivery, special projects, event coordination, concierge, personal and assistantn services

**VANTAGE COMMERICAL SERVICES GROUP, LLC****DBE****Contact:** PAUL DIXON**Address:** 15 CONSTITUTION DRIVE SUIT  
BEDFORD NH 03110**Tel:** 603 608 8303**Fax:** 603 472 8787**e-mail:** info@vantage-commerical.com**web site:****Products and Services**

Loan Broker

**WILD THINGS, INC.**

**WBE**

**Contact:** MARIE MEUNIER

**Address:** 1618 WHITE MOUNTAIN HIGHW  
NORTH CONWAY NH 03860

**Tel:** 603 356 9453

**Fax:** 603 356 0305

**e-mail:** titoune@wildthingsgear.com

**web site:** www.wildthingsgear.com

**Products and Services**

Manufacturer of specialized high performance apparel, packs, luggage, and accessories. Apparel prototyping, development, and sample services. Cut and sew operations with specific attention to quality, durability, and performance.

**WOODCHUCK'S BUILDING & HOME CENTER**

**MBE**

**Contact:** BOB DICKERSON

**Address:** PO BOX 240902  
DORCHESTER MA 02124

**Tel:** 617 524 9693

**Fax:** 617 524 9960

**e-mail:**

**web site:**

**Products and Services**

Construction Materials

Supplier of Construction Material and Hardware; Procurement of Countertops, Cabinetry, Doors and Frames

## **Attachment 4: Unified Certification Program (UCP) Agreement**

### **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PROCEDURES FOR A UNIFIED CERTIFICATION PROGRAM**

In the spring of 1999, the United States Department of Transportation (US DOT) issued guidance concerning the new Disadvantaged Business Enterprise (DBE) Program regulations. As part of the new program, there are requirements for new certification procedures and a Unified Certification Program (UCP). All DOT recipients in the state must participate in the UCP.

The intent of the UCP is to allow all recipients to participate in an agreement establishing UCP certification procedures and standards pursuant to Subpart E – Certification Procedures of the new DBE Program. The UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and the UCP shall implement DOT directives and guidance concerning certification matters. The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

Since the inception of the DBE Program in New Hampshire, the Federal Highway Administration has been the lead agency in the implementation and administration of the DBE Program. As past certification decisions have been made by the New Hampshire Department of Transportation (NHDOT) through its Human Resources Bureau, Labor Compliance Office, continuation of this process will not affect current and future certification procedures. This agreement recognizes the NHDOT's Labor Compliance Office as the certification agent for all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program. All obligations of recipients, with respect to certification and nondiscrimination, must be carried out by the UCP.

In consideration of these mutual objectives, the signatories for this Unified Certification Program are those recipients within Federal Highway Administration, Federal Aviation Administration and Federal Transit Administration. They mutually agree to the following:

1. All DOT recipients will participate in the UCP.
2. The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation to in the DOT DBE Program.

3. All certifications shall be pre-certifications.
4. The UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.
5. The UCP shall maintain a unified DBE Directory for all firms certified by the UCP and make it available to the public electronically, on the Internet, as well as in print.

## **Attachment 5: DBE Application Form**



# **State of New Hampshire Department of Transportation**



**Disadvantaged Business Enterprise  
Certification**

## **DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST**

**In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.**

### **All Applicants**

- ☐ Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

### **Partnership or Joint Venture**

- ☐ Original and any amended Partnership or Joint Venture Agreements

### **Corporation or LLC**

- ☐ Official Articles of Incorporation (*signed by the state official*)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

### **Trucking Company**

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

### **Regular Dealer**

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

**NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.**

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**49 C.F.R. PART 26**

***UNIFORM CERTIFICATION APPLICATION***

**ROADMAP FOR APPLICANTS**

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indehtableofsize.html> (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
PROGRAM UNIFORM CERTIFICATION APPLICATION**

**NOTE:** If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

**Section 1: CERTIFICATION INFORMATION**

**A. Prior/Other Certifications**

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

**NOTE:** If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

**B. Prior/Other Applications and Privileges**

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

**Section 2: GENERAL INFORMATION**

**A. Contact Information**

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation.
- (3) Indicate the primary phone number of your firm.
- (4) Indicate a secondary phone number, if any.
- (5) Indicate your firm's fax number, if any.
- (6) Indicate your firm's or your contact person's email address.
- (7) Indicate your firm's website address, if any.
- (8) State the street address of your firm (i.e. the physical location of its offices -- not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

**B. Business Profile**

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) Give the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) Give the date on which your firm was officially established, as stated in your firm's Articles of Incorporation.

- (4) Give the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit."

**NOTE:** If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

**C. Relationships with Other Businesses**

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
  - (a) your firm has been a subsidiary of any other firm;
  - (b) your firm consisted of a partnership in which one or more of the partners are other firms;
  - (c) your firm has owned any percentage of any other firm; and
  - (d) your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

**D. Immediate Family Member Businesses**

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

**Section 3: OWNERSHIP**

**Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):**

**A. Background Information**

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

**B. Ownership Interest**

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's title or function held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

**C. Disadvantaged Status**

**NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e. for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)**

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

**Section 4: CONTROL**

**A. Identify your firm's Officers and Board of Directors:**

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

**B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:**

- (1) Making of financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
  - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
  - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
  - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
  - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
  - (6) Office management;
  - (7) Marketing and sales;
  - (8) Purchasing of major equipment;
  - (9) Signing company checks (for any purpose); and
  - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
  - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
  - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**  
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
  - (2) **Vehicles**  
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
  - (3) **Office Space**  
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
  - (4) **Storage Space**  
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**  
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) **Banking Information**
    - (a) State the name of your firm's bank.
    - (b) Give the main phone number of your firm's bank branch.
    - (c) Give the address of your firm's bank branch.
  - (2) **Bonding Information**
    - (a) State your firm's Binder Number.
    - (b) State the name of your firm's bond agent and/or broker.
    - (c) Give your agent's/broker's phone number.
    - (d) Give your agent's/broker's address.
    - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**  
State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**  
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**  
List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**  
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**  
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**  
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

## Section 1: CERTIFICATION INFORMATION

### A. Prior/Other Certifications

|   |                               |   |
|---|-------------------------------|---|
| Is your firm currently certified for any of the following programs?<br><i>(If Yes, check appropriate box(es))</i> | <input type="checkbox"/> DBE  | Name of certifying agency:  |
|   |                               | Has your firm's state UCP conducted an on-site visit?   |
|   |                               | <input type="checkbox"/> Yes, on ____/____/____ State: _____ <input type="checkbox"/> No  |
|   | <input type="checkbox"/> 8(a) | <b>⊗ STOP!</b> If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU. |
| <input type="checkbox"/> SDB  |                               |   |

### B. Prior/Other Applications and Privileges

|  |  |
|--|--|
| Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?<br><input type="checkbox"/> Yes, on ____/____/____ <input type="checkbox"/> No<br>If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action: |  |
|--|--|

## Section 2: GENERAL INFORMATION

### A. Contact Information

|   |                    |                                    |                |
|---|--------------------|------------------------------------|----------------|
| (1) Contact person and Title:                       |                    | (2) Legal name of firm:            |                |
| (3) Phone #:  | (4) Other Phone #: | (5) Fax #:                         |                |
| (6) E-mail:   |                    | (7) Website <i>(if have one)</i> : |                |
| (8) Street address of firm <i>(No P.O. Box)</i> :   |                    | City:                              | County/Parish: |
|   |                    | State:                             | Zip:           |
| (9) Mailing address of firm <i>(if different)</i> : |                    | City:                              | County/Parish: |
|   |                    | State:                             | Zip:           |

### B. Business Profile

|  |   |
|--|---|
| (1) Describe the primary activities of your firm: <small>(See Appendix I pages I3 and I4)</small>  | (2) Federal Tax ID (if any):  |
|  |   |
| (3) This firm was established on ____/____/____  | (4) I/We have owned this firm since: ____/____/____   |
| (5) Method of acquisition <i>(check all that apply)</i> :<br><input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession<br><input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i> _____ |   |
| (6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No  | <b>⊗ STOP!</b> If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application. |

(7) Type of firm (*check all that apply*):

☐ Sole Proprietorship

☐ Partnership

☐ Corporation

☐ Limited Liability Partnership

☐ Limited Liability Corporation

☐ Joint Venture

☐ Other, Describe: \_\_\_\_\_

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?

☐ Yes ☐ No

If Yes, explain: \_\_\_\_\_

(9) Number of employees: Full-time \_\_\_\_\_ Part-time \_\_\_\_\_ Total \_\_\_\_\_

(10) Specify the gross receipts of the firm for the last 3 years: Year \_\_\_\_\_ Total receipts \$ \_\_\_\_\_

Year \_\_\_\_\_ Total receipts \$ \_\_\_\_\_

Year \_\_\_\_\_ Total receipts \$ \_\_\_\_\_

### C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?

☐ Yes ☐ No

If Yes, identify: Other Firm's name: \_\_\_\_\_

Explain nature of shared facilities: \_\_\_\_\_

|  |  |  |
|--|--|--|
| (2) At present, or at any time in the past, has your firm: | (a) been a subsidiary of any other firm?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|  | (b) consisted of a partnership in which one or more of the partners are other firms? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|  | (c) owned any percentage of any other firm?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|  | (d) had any subsidiaries?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? ☐ Yes ☐ No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (*attach extra sheets, if needed*):

|    | <u>Name</u> | <u>Address</u> | <u>Type of Business</u> |
|----|-------------|----------------|-------------------------|
| 1. |             |                |                         |
| 2. |             |                |                         |
| 3. |             |                |                         |

### D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? ☐ Yes ☐ No

If Yes, then list (*attach extra sheets, if needed*):

|    | <u>Name</u> | <u>Relationship</u> | <u>Company</u> | <u>Type of Business</u> | <u>Own or Manage?</u> |
|----|-------------|---------------------|----------------|-------------------------|-----------------------|
| 1. |             |                     |                |                         |                       |
| 2. |             |                     |                |                         |                       |



### Section 3: OWNERSHIP

**Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below** *(If more than one owner, attach separate sheets for each additional owner):*

#### A. Background Information

|   |   |                   |
|---|---|-------------------|
| (1) Name:   | (2) Title:  | (3) Home Phone #: |
| (4) Home Address <i>(street and number)</i> : _____   |   |                   |
| City: _____ State: _____ Zip: _____   |   |                   |
| (5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female                             | (6) Ethnic group membership <i>(Check all that apply)</i> :   |                   |
| (7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No                            | <input type="checkbox"/> Black <span style="margin-left: 50px;"><input type="checkbox"/> Hispanic</span> <span style="margin-left: 50px;"><input type="checkbox"/> Native American</span><br><input type="checkbox"/> Asian Pacific <span style="margin-left: 50px;"><input type="checkbox"/> Subcontinent Asian</span> |                   |
| (8) Lawfully Admitted Permanent Resident:<br><input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Other <i>(specify)</i> _____   |                   |

#### B. Ownership Interest

|   |   |   |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
|---|---|---|----------------------|----------------------|------------------------|--------------|----------------------|------------------------|-------------|----|--|-----------|----|--|-------|----|
| (1) Number of years as owner:   | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">(2) Initial investment to acquire ownership interest in firm:</td> <td style="width: 20%; text-align: center;"><u>Type</u></td> <td style="width: 20%; text-align: center;"><u>Dollar Value</u></td> </tr> <tr> <td></td> <td style="text-align: center;">Cash</td> <td style="text-align: center;">\$</td> </tr> <tr> <td></td> <td style="text-align: center;">Real Estate</td> <td style="text-align: center;">\$</td> </tr> <tr> <td></td> <td style="text-align: center;">Equipment</td> <td style="text-align: center;">\$</td> </tr> <tr> <td></td> <td style="text-align: center;">Other</td> <td style="text-align: center;">\$</td> </tr> </table> | (2) Initial investment to acquire ownership interest in firm: | <u>Type</u>          | <u>Dollar Value</u>  |                        | Cash         | \$                   |                        | Real Estate | \$ |  | Equipment | \$ |  | Other | \$ |
| (2) Initial investment to acquire ownership interest in firm:   |   | <u>Type</u>   | <u>Dollar Value</u>  |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
|   |   | Cash  | \$                   |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
|   | Real Estate   | \$  |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
|   | Equipment   | \$  |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
|   | Other   | \$  |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
| (3) Percentage owned:   |   |   |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
| (4) Familial relationship to other owners:  |   |   |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">(5) Shares of Stock:</td> <td style="width: 15%; text-align: center;"><u>Number</u></td> <td style="width: 15%; text-align: center;"><u>Percentage</u></td> <td style="width: 15%; text-align: center;"><u>Class</u></td> <td style="width: 15%; text-align: center;"><u>Date acquired</u></td> <td style="width: 20%; text-align: center;"><u>Method Acquired</u></td> </tr> </table> |   |   | (5) Shares of Stock: | <u>Number</u>        | <u>Percentage</u>      | <u>Class</u> | <u>Date acquired</u> | <u>Method Acquired</u> |             |    |  |           |    |  |       |    |
| (5) Shares of Stock:  | <u>Number</u>   | <u>Percentage</u>   | <u>Class</u>         | <u>Date acquired</u> | <u>Method Acquired</u> |              |                      |                        |             |    |  |           |    |  |       |    |
| (6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If Yes, identify: Name of Business: _____ Function/Title: _____  |   |   |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |
| (7) Does this owner own or work for any other firm(s) that has a relationship with this firm <i>(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No<br><br>If Yes, identify: Name of Business: _____ Function/Title: _____<br>Nature of Business Relationship: _____  |   |   |                      |                      |                        |              |                      |                        |             |    |  |           |    |  |       |    |

#### C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

|  |
|--|
| (1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)</i> |
| (2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If Yes, explain <i>(attach additional sheets if needed)</i> :   |

## Section 4: CONTROL

**A. Identify your firm's Officers & Board of Directors** *(If additional space is required, attach a separate sheet):*

|                                    | Name | Title | Date Appointed | Ethnicity | Gender |
|------------------------------------|------|-------|----------------|-----------|--------|
| <b>(1) Officers of the Company</b> | (a)  |       |                |           |        |
|                                    | (b)  |       |                |           |        |
|                                    | (c)  |       |                |           |        |
|                                    | (d)  |       |                |           |        |
|                                    | (e)  |       |                |           |        |
| <b>(2) Board of Directors</b>      | (a)  |       |                |           |        |
|                                    | (b)  |       |                |           |        |
|                                    | (c)  |       |                |           |        |
|                                    | (d)  |       |                |           |        |
|                                    | (e)  |       |                |           |        |

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**B. Identify your firm's management personnel who control your firm in the following areas** *(If more than two persons, attach a separate sheet):*

|  | Name | Title | Ethnicity | Gender |
|--|------|-------|-----------|--------|
| <b>(1) Financial Decisions</b><br><i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i> | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(2) Estimating and bidding</b>  | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(3) Negotiating and Contract Execution</b>  | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(4) Hiring/firing of management personnel</b>   | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(5) Field/Production Operations Supervisor</b>  | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(6) Office management</b>   | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(7) Marketing/Sales</b>   | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(8) Purchasing of major equipment</b>   | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(9) Authorized to Sign Company Checks (for any purpose)</b>   | a.   |       |           |        |
|  | b.   |       |           |        |
| <b>(10) Authorized to make Financial Transactions</b>  | a.   |       |           |        |
|  | b.   |       |           |        |

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
Business: \_\_\_\_\_ Function: \_\_\_\_\_

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?

☐ Yes ☐ No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
Nature of Business Relationship: \_\_\_\_\_

**C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):**

**(1) Equipment**

| Type of Equipment | Make/Model | Current Value | Owned or Leased? |
|-------------------|------------|---------------|------------------|
| (a)               |            |               |                  |
| (b)               |            |               |                  |
| (c)               |            |               |                  |

**(2) Vehicles**

| Type of Vehicle | Make/Model | Current Value | Owned or Leased? |
|-----------------|------------|---------------|------------------|
| (a)             |            |               |                  |
| (b)             |            |               |                  |
| (c)             |            |               |                  |

**(3) Office Space**

| Street Address | Owned or Leased? | Current Value of Property or Lease |
|----------------|------------------|------------------------------------|
| (a)            |                  |                                    |
| (b)            |                  |                                    |

**(4) Storage Space**

| Street Address | Owned or Leased? | Current Value of Property or Lease |
|----------------|------------------|------------------------------------|
| (a)            |                  |                                    |
| (b)            |                  |                                    |

**D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No**

If Yes, explain:

**E. Financial Information**

**(1) Banking Information:**

(a) Name of bank: \_\_\_\_\_ (b) Phone No: ( ) \_\_\_\_\_  
(c) Address of bank: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: \_\_\_\_\_  
 (b) Name of agent/broker \_\_\_\_\_ (c) Phone No: ( ) \_\_\_\_\_  
 (d) Address of agent/broker: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 (e) Bonding limit: Aggregate limit \$ \_\_\_\_\_ Project limit \$ \_\_\_\_\_

**F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:**

| Name of Source | Address of Source | Name of Person Securing the Loan | Original Amount | Current Balance | Purpose of Loan |
|----------------|-------------------|----------------------------------|-----------------|-----------------|-----------------|
| 1.             |                   |                                  |                 |                 |                 |
| 2.             |                   |                                  |                 |                 |                 |
| 3.             |                   |                                  |                 |                 |                 |

**G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):**

| Contribution/Asset | Dollar Value | From Whom Transferred | To Whom Transferred | Relationship | Date of Transfer |
|--------------------|--------------|-----------------------|---------------------|--------------|------------------|
| 1.                 |              |                       |                     |              |                  |
| 2.                 |              |                       |                     |              |                  |
| 3.                 |              |                       |                     |              |                  |

**H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed):**

| Name of License/Permit Holder | Type of License/Permit | Expiration Date | License Number and State |
|-------------------------------|------------------------|-----------------|--------------------------|
| 1.                            |                        |                 |                          |
| 2.                            |                        |                 |                          |
| 3.                            |                        |                 |                          |

**I. List the three largest contracts completed by your firm in the past three years, if any:**

| Name of Owner/Contractor | Name/Location of Project | Type of Work Performed | Dollar Value of Contract |
|--------------------------|--------------------------|------------------------|--------------------------|
| 1.                       |                          |                        |                          |
| 2.                       |                          |                        |                          |
| 3.                       |                          |                        |                          |

**J. List the three largest active jobs on which your firm is currently working:**

| <b>Name of Prime Contractor and Project Number</b> | <b>Location of Project</b> | <b>Type of Work</b> | <b>Project Start Date</b> | <b>Anticipated Completion Date</b> | <b>Dollar Value of Contract</b> |
|--|----------------------------|---------------------|---------------------------|------------------------------------|---------------------------------|
| 1.   |                            |                     |                           |                                    |                                 |
| 2.   |                            |                     |                           |                                    |                                 |
| 3.   |                            |                     |                           |                                    |                                 |

## Appendix 1. Work Items\*

Contractors, check the following items of work performed by your business:

|                                |                          |                                |                          |                              |                          |
|--------------------------------|--------------------------|--------------------------------|--------------------------|------------------------------|--------------------------|
| <i>Abatement Services</i>      | <input type="checkbox"/> | <i>Fire Hydrant Install</i>    | <input type="checkbox"/> | <i>Rebar</i>                 | <input type="checkbox"/> |
| <i>Asbestos</i>                | <input type="checkbox"/> | <i>Flagging</i>                | <input type="checkbox"/> | <i>Reclaiming</i>            | <input type="checkbox"/> |
| <i>Blasting</i>                | <input type="checkbox"/> | <i>Flooring</i>                | <input type="checkbox"/> | <i>Reinforcing Steel</i>     | <input type="checkbox"/> |
| <i>Borings</i>                 | <input type="checkbox"/> | <i>Geosynthetic Liners</i>     | <input type="checkbox"/> | <i>Removal</i>               | <input type="checkbox"/> |
| <i>Bridge Deck Membrane</i>    | <input type="checkbox"/> | <i>Geotechnical</i>            | <input type="checkbox"/> | <i>Road Construction</i>     | <input type="checkbox"/> |
| <i>Bridge Excavation</i>       | <input type="checkbox"/> | <i>Grading</i>                 | <input type="checkbox"/> | <i>Roofing</i>               | <input type="checkbox"/> |
| <i>Bridge Expansion Joints</i> | <input type="checkbox"/> | <i>Granular Backfill</i>       | <input type="checkbox"/> | <i>Rumble Strips</i>         | <input type="checkbox"/> |
| <i>Bridge Inspection</i>       | <input type="checkbox"/> | <i>Guardrail</i>               | <input type="checkbox"/> | <i>Sawcut&amp;Seal</i>       | <input type="checkbox"/> |
| <i>Bridge Painting</i>         | <input type="checkbox"/> | <i>Gutters</i>                 | <input type="checkbox"/> | <i>Sealcoating</i>           | <input type="checkbox"/> |
| <i>Bridge Rail</i>             | <input type="checkbox"/> | <i>Highway Lighting</i>        | <input type="checkbox"/> | <i>Septic Systems</i>        | <input type="checkbox"/> |
| <i>Bridge Removal</i>          | <input type="checkbox"/> | <i>Humus</i>                   | <input type="checkbox"/> | <i>Sewer Lines</i>           | <input type="checkbox"/> |
| <i>Bridge Waterproofing</i>    | <input type="checkbox"/> | <i>HVAC</i>                    | <input type="checkbox"/> | <i>Shear Connectors</i>      | <input type="checkbox"/> |
| <i>Bridge Work</i>             | <input type="checkbox"/> | <i>Hydrants</i>                | <input type="checkbox"/> | <i>Shear Stud Welding</i>    | <input type="checkbox"/> |
| <i>Building Trade Work</i>     | <input type="checkbox"/> | <i>Hydroseeding</i>            | <input type="checkbox"/> | <i>Shotblasting</i>          | <input type="checkbox"/> |
| <i>Carpentry</i>               | <input type="checkbox"/> | <i>Irrigation</i>              | <input type="checkbox"/> | <i>Sidewalk</i>              | <input type="checkbox"/> |
| <i>Clearing/Grubbing</i>       | <input type="checkbox"/> | <i>Joint Repair</i>            | <input type="checkbox"/> | <i>Sign Structures</i>       | <input type="checkbox"/> |
| <i>Cofferdam</i>               | <input type="checkbox"/> | <i>Landfill Closures</i>       | <input type="checkbox"/> | <i>Site Inspection</i>       | <input type="checkbox"/> |
| <i>Cold Planning</i>           | <input type="checkbox"/> | <i>Landscaping</i>             | <input type="checkbox"/> | <i>SIP Decking</i>           | <input type="checkbox"/> |
| <i>Concrete Work</i>           | <input type="checkbox"/> | <i>Manhole Coring</i>          | <input type="checkbox"/> | <i>Site Lighting</i>         | <input type="checkbox"/> |
| <i>Construction Management</i> | <input type="checkbox"/> | <i>Masonry work</i>            | <input type="checkbox"/> | <i>Sitework</i>              | <input type="checkbox"/> |
| <i>Crack Filling</i>           | <input type="checkbox"/> | <i>Marine Services</i>         | <input type="checkbox"/> | <i>Sodding</i>               | <input type="checkbox"/> |
| <i>Crush</i>                   | <input type="checkbox"/> | <i>Material Testing</i>        | <input type="checkbox"/> | <i>Steel Erection</i>        | <input type="checkbox"/> |
| <i>Culverts</i>                | <input type="checkbox"/> | <i>Metal Fabrication</i>       | <input type="checkbox"/> | <i>Stormwater Management</i> | <input type="checkbox"/> |
| <i>Curbing</i>                 | <input type="checkbox"/> | <i>Milling</i>                 | <input type="checkbox"/> | <i>Structural Painting</i>   | <input type="checkbox"/> |
| <i>Deck Grooving</i>           | <input type="checkbox"/> | <i>Pavement Markings</i>       | <input type="checkbox"/> | <i>Testing Hydrostate</i>    | <input type="checkbox"/> |
| <i>Demolition</i>              | <input type="checkbox"/> | <i>Paving</i>                  | <input type="checkbox"/> | <i>Traffic Control</i>       | <input type="checkbox"/> |
| <i>Drainage</i>                | <input type="checkbox"/> | <i>Pilling</i>                 | <input type="checkbox"/> | <i>Traffic Signals</i>       | <input type="checkbox"/> |
| <i>Drilling</i>                | <input type="checkbox"/> | <i>Pipe</i>                    | <input type="checkbox"/> | <i>Traffic Signs</i>         | <input type="checkbox"/> |
| <i>Electrical</i>              | <input type="checkbox"/> | <i>Plantings</i>               | <input type="checkbox"/> | <i>Tree Removal</i>          | <input type="checkbox"/> |
| <i>Engineering Services</i>    | <input type="checkbox"/> | <i>Plumbing</i>                | <input type="checkbox"/> | <i>Trucking</i>              | <input type="checkbox"/> |
| <i>Erosion Control Plans</i>   | <input type="checkbox"/> | <i>Pre-cast Concrete</i>       | <input type="checkbox"/> | <i>Vibration Monitoring</i>  | <input type="checkbox"/> |
| <i>Excavation</i>              | <input type="checkbox"/> | <i>Property Management</i>     | <input type="checkbox"/> | <i>Water lines</i>           | <input type="checkbox"/> |
| <i>Fencing</i>                 | <input type="checkbox"/> | <i>Pull boxes, light bases</i> | <input type="checkbox"/> | <i>Welding</i>               | <input type="checkbox"/> |
| <i>Other, specify:</i>         | <hr/>                    |                                |                          |                              |                          |

\* For any item of work, service or product not listed, please use the space provided.

**Consultants, check the following items of work provided by your business:**

|                                       |                          |                                   |                          |  |                          |
|---------------------------------------|--------------------------|-----------------------------------|--------------------------|--|--------------------------|
| <i>Aerial Photography</i>             | <input type="checkbox"/> | <i>Highway Lighting</i>           | <input type="checkbox"/> | <i>Remediation</i>                       | <input type="checkbox"/> |
| <i>Archaeological</i>                 | <input type="checkbox"/> | <i>Historical</i>                 | <input type="checkbox"/> | <i>Road Design</i>                       | <input type="checkbox"/> |
| <i>Architectural</i>                  | <input type="checkbox"/> | <i>HVAC</i>                       | <input type="checkbox"/> | <i>ROW Services</i>                      | <input type="checkbox"/> |
| <i>Borings</i>                        | <input type="checkbox"/> | <i>Hydraulics</i>                 | <input type="checkbox"/> | <i>Site Inspection</i>                   | <input type="checkbox"/> |
| <i>Bridge Design</i>                  | <input type="checkbox"/> | <i>IT Consulting</i>              | <input type="checkbox"/> | <i>Socio-Economic Studies</i>            | <input type="checkbox"/> |
| <i>Bridge Inspection</i>              | <input type="checkbox"/> | <i>Landscape Architecture</i>     | <input type="checkbox"/> | <i>Software Services</i>                 | <input type="checkbox"/> |
| <i>CADD Drafting</i>                  | <input type="checkbox"/> | <i>Management Consulting</i>      | <input type="checkbox"/> | <i>Stormwater Management</i>             | <input type="checkbox"/> |
| <i>Civil Support Services</i>         | <input type="checkbox"/> | <i>Mapping</i>                    | <input type="checkbox"/> | <i>Survey</i>                            | <input type="checkbox"/> |
| <i>Communication Services</i>         | <input type="checkbox"/> | <i>Marketing Services</i>         | <input type="checkbox"/> | <i>Technical Writing</i>                 | <input type="checkbox"/> |
| <i>Construction Management</i>        | <input type="checkbox"/> | <i>Material Testing</i>           | <input type="checkbox"/> | <i>Topographic</i>                       | <input type="checkbox"/> |
| <i>Drainage Design</i>                | <input type="checkbox"/> | <i>Pavement Eng Services</i>      | <input type="checkbox"/> | <i>Traffic Analysis</i>                  | <input type="checkbox"/> |
| <i>Environmental</i>                  | <input type="checkbox"/> | <i>Photogrammetry</i>             | <input type="checkbox"/> | <i>Traffic Signal Design</i>             | <input type="checkbox"/> |
| <i>Env't Noise &amp; Air Analysis</i> | <input type="checkbox"/> | <i>Planning/Land Use Analysis</i> | <input type="checkbox"/> | <i>Transportation Planning</i>           | <input type="checkbox"/> |
| <i>Env't Wetlands</i>                 | <input type="checkbox"/> | <i>Printing</i>                   | <input type="checkbox"/> | <i>Underground Utility TV Inspection</i> | <input type="checkbox"/> |
| <i>Erosion Control</i>                | <input type="checkbox"/> | <i>Public Participation</i>       | <input type="checkbox"/> | <i>Utility Lines</i>                     | <input type="checkbox"/> |
| <i>Geotechnical</i>                   | <input type="checkbox"/> | <i>Railroad Design</i>            | <input type="checkbox"/> | <i>Vibration Monitoring</i>              | <input type="checkbox"/> |
| <i>Hazardous Materials</i>            | <input type="checkbox"/> | <i>Real Estate Services</i>       | <input type="checkbox"/> |  |                          |
| <i>Others, specify</i>                |                          |                                   |                          |  |                          |

**Services, Suppliers and Manufacturers, check the following products and services provided by your business:**

|                               |                          |                             |                          |                                     |                          |
|-------------------------------|--------------------------|-----------------------------|--------------------------|-------------------------------------|--------------------------|
| <i>Air Transportation</i>     | <input type="checkbox"/> | <i>Marketing Services</i>   | <input type="checkbox"/> | <i>Proofreading</i>                 | <input type="checkbox"/> |
| <i>Assistance Services</i>    | <input type="checkbox"/> | <i>Concrete Products</i>    | <input type="checkbox"/> | <i>Software Services</i>            | <input type="checkbox"/> |
| <i>Errands</i>                | <input type="checkbox"/> | <i>Fence Products</i>       | <input type="checkbox"/> | <i>Toner Supplier</i>               | <input type="checkbox"/> |
| <i>Business Forms</i>         | <input type="checkbox"/> | <i>Office Equipment</i>     | <input type="checkbox"/> | <i>Traffic signals Manufacturer</i> | <input type="checkbox"/> |
| <i>Communication Services</i> | <input type="checkbox"/> | <i>Office Furniture</i>     | <input type="checkbox"/> | <i>System Docs. Support</i>         | <input type="checkbox"/> |
| <i>Computer Products</i>      | <input type="checkbox"/> | <i>Office Supplies</i>      | <input type="checkbox"/> | <i>Technical Editing</i>            | <input type="checkbox"/> |
| <i>Computer Programming</i>   | <input type="checkbox"/> | <i>Printing Services</i>    | <input type="checkbox"/> |                                     |                          |
| <i>Legal Services</i>         | <input type="checkbox"/> | <i>Promotional Services</i> | <input type="checkbox"/> |                                     |                          |

Others, specify

# Personal Net Worth Statement

As of \_\_\_\_\_, \_\_\_\_\_

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

|                                     |                 |
|-------------------------------------|-----------------|
| Name                                | Business Phone  |
| Residence Address                   | Residence Phone |
| City, State, & Zip Code             |                 |
| Business Name of Applicant/Borrower |                 |

| ASSETS   | (Omit Cents) | LIABILITIES                             | (Omit Cents) |
|--|--------------|---|--------------|
| Cash on hand & in Banks .....                  | \$ .....     | Accounts Payable .....                  | \$ .....     |
| Savings Accounts .....                         | \$ .....     | Notes Payable to Banks and Others ..... | \$ .....     |
| IRA or Other Retirement Account .....          | \$ .....     | (Describe in Section 2)                 |              |
| Accounts & Notes Receivable .....              | \$ .....     | Installment Account (Auto) .....        | \$ .....     |
| Life Insurance-Cash Surrender Value Only ..... | \$ .....     | Mo. Payments \$ .....                   |              |
| (Complete Section 8)                           |              | Installment Account (Other) .....       | \$ .....     |
| Stocks and Bonds .....                         | \$ .....     | Mo. Payments \$ .....                   |              |
| (Describe in Section 3)                        |              | Loan on Life Insurance .....            | \$ .....     |
| Real Estate .....                              | \$ .....     | Mortgages on Real Estate .....          | \$ .....     |
| (Describe in Section 4)                        |              | (Describe in Section 4)                 |              |
| Automobile-Present Value .....                 | \$ .....     | Unpaid Taxes .....                      | \$ .....     |
| Other Personal Property .....                  | \$ .....     | (Describe in Section 6)                 |              |
| (Describe in Section 5)                        |              | Other Liabilities .....                 | \$ .....     |
| Other Assets .....                             | \$ .....     | (Describe in Section 7)                 |              |
| (Describe in Section 5)                        |              | Total Liabilities .....                 | \$ .....     |
|  |              | Net Worth .....                         | \$ .....     |
| <b>Total</b>                                   | \$ .....     | <b>Total</b>                            | \$ .....     |

| Section 1. Source of Income          | Contingent Liabilities                 |
|--------------------------------------|--|
| Salary .....                         | As Endorser or Co-Maker .....          |
| Net Investment Income .....          | Legal Claims & Judgments .....         |
| Real Estate Income .....             | Provision for Federal Income Tax ..... |
| Other Income (Describe below)* ..... | Other Special Debt .....               |

Description of Other Income in Section 1.

|  |
|--|
|  |
|  |
|  |
|  |

\*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

| Name and Address of Noteholder(s) | Original Balance | Current Balance | Payment Amount | Frequency (monthly, etc.) | How Secured or Endorsed Type of Collateral |
|-----------------------------------|------------------|-----------------|----------------|---------------------------|--|
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |



| Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed). |                    |      |                                    |                               |             |
|---|--------------------|------|------------------------------------|-------------------------------|-------------|
| Number of Shares  | Name of Securities | Cost | Market Value<br>Quotation/Exchange | Date of<br>Quotation/Exchange | Total Value |
|   |                    |      |                                    |                               |             |
|   |                    |      |                                    |                               |             |
|   |                    |      |                                    |                               |             |
|   |                    |      |                                    |                               |             |

| Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.) |            |            |            |
|--|------------|------------|------------|
|  | Property A | Property B | Property C |
| Type of Property   |            |            |            |
| Address  |            |            |            |
| Date Purchased   |            |            |            |
| Original Cost  |            |            |            |
| Present Market Value   |            |            |            |
| Name &<br>Address of Mortgage Holder   |            |            |            |
| Mortgage Account Number  |            |            |            |
| Mortgage Balance   |            |            |            |
| Amount of Payment per Month/Year   |            |            |            |
| Status of Mortgage   |            |            |            |

| Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency) |
|---|
|   |

| Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.) |
|--|
|  |

| Section 7. Other Liabilities. (Describe in detail.) |
|---|
|   |

| Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries) |
|---|
|   |

I authorize the Office of Certification at the New Hampshire Department of Transportation to verify the accuracy of the statements made in order to determine whether I meet the standards of economic disadvantage for participation in the DBE Program at the New Hampshire Department of Transportation. These statements are true and correct to the best of my believe

|            |       |                         |
|------------|-------|-------------------------|
| Signature: | Date: | Social Security Number: |
| Signature: | Date: | Social Security Number: |

If you have questions or comments concerning this form, please contact the DBE Coordinator at 603-271-6612.

## **AFFIDAVIT OF CERTIFICATION**

*This form must be signed and notarized for each owner upon which disadvantaged status is relied.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PEALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed), swear or affirm under penalty of law that I am \_\_\_\_\_ (title) of applicant firm \_\_\_\_\_ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female                      Black American                      Hispanic American                      Native American  
Asian- Pacific American                      Subcontinent Asian American  
Other (specify) \_\_\_\_\_.

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare, under penalty of perjury, that the information provided in this application and supporting documents is true and correct.

Executed on: \_\_\_\_\_  
(Date)

Signature: \_\_\_\_\_

**NOTARY CERTIFICATE:**

**Attachment 6: Annual No Change Affidavit and Certification of  
Disadvantage and Statement of Personal Net Worth**



**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**ANNUAL NO CHANGE AFFIDAVIT**

To be a disadvantaged owned or woman owned business eligible to participate in the DBE program, a firm must meet the following criteria:

- ✓ Must be a member of a recognized disadvantaged group or a woman.
- ✓ Must own at least 51% of the ownership in the firm.
- ✓ Must possess the day-to-day management, financial and operational control of the firm.
- ✓ Must be a substantial investor in the firm.
- ✓ Must be an on-going concern.

I hereby affirm that «**Company\_Name**» is a disadvantaged/woman-owned business. I further affirm that no changes in ownership, control, size or disadvantaged status as required of 49 CFR part 26 have occurred since this firm's latest certification in the State of New Hampshire. If there has been a change, I further affirm that the proper documentation is on record with the certifying agent. «**Company\_Name**» meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years does not exceed the SBA size standards as defined by North American Industrial Classification System (NAICS).

The undersigned affirms that the statements are true and correct. *Any information, which has been misrepresented, will be grounds for de-certification.*

Please return this affidavit with all information requested in the accompanying letter. *Failure to return this form and the requested information may result in the removal of the firm's name from the Department's Disadvantaged Business Enterprise Directory.*

**Signature of Company Officer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION**  
**Bureau of Human Resources, Labor Compliance Office**

***CERTIFICATION OF DISADVANTAGE AND  
STATEMENT OF PERSONAL NET WORTH***

**Complete this form for: (1) Each socially and economically disadvantaged sole proprietor. (2) Each socially and economically disadvantaged limited and general partner whose combined ownership totals 51% or more, (3) Each socially and economically disadvantaged stock holder making up 51% or more of voting stock of a corporation, or (4) Each socially and economically disadvantaged owner whose combined ownership totals 51% or more of a centralized or decentralized limited liability company.**

|   |                        |
|---|------------------------|
| Name:   | Business Phone (    )  |
| Residence Address:                                  | Residence Phone (    ) |
| City, State & Zip code:                             |                        |
| Business Name Of Applicant; « <b>Company Name</b> » |                        |

**DETERMINATION OF SOCIAL DISADVANTAGE.**

“In considering whether a DBE applicant has experienced social disadvantage based upon the effects of discrimination, the applicant shall take into account whether he or she claims to be member of a disadvantage group, has acted as a member of a community of disadvantaged persons and would be identified by persons in the population at large as belonging to the disadvantaged group”.

I certify that I have read and understand the above statement. I further certify that I have experienced social disadvantage based on discrimination because of my: (mark all that apply)    *( This statement is valid only when signed by the individual claiming social disadvantage)*

Race/Ethnicity: \_\_\_\_\_ Gender: \_\_\_\_\_ Other: \_\_\_\_\_ *(Please explain on separate sheet)*

Signature: \_\_\_\_\_ Owner/Title: \_\_\_\_\_

**PERSONAL FINANCE STATEMENT**

**AS OF** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

| ASSETS                                     | (OMIT CENTS) | LIABILITIES  | (OMIT CENTS) |
|--|--------------|--|--------------|
| Cash on hand and in Banks .....            | \$ _____     | Account Payable.....   | \$ _____     |
| Savings Accounts .....                     | \$ _____     | Notes Payable to Banks & Others.....                           | \$ _____     |
| IRA or other Retirement Accounts .....     | \$ _____     | <i>(Describe in Section 1)</i>                                 |              |
| Accounts and notes receivable .....        | \$ _____     | Installment Account (Auto) .....                               | \$ _____     |
| Life Insurance-Cash Surrender Value Only   | \$ _____     | Installment Account (Other) .....                              | \$ _____     |
| <i>(Complete Section 7)</i>                |              | Loan on Life Insurance .....                                   | \$ _____     |
| Stocks And Bonds .....                     | \$ _____     | Mortgages on Real Estate .....                                 | \$ _____     |
| <i>(Describe in Section 2)</i>             |              | <i>(Describe in Section 3)</i>                                 |              |
| Real Estate (Other than Primary Residence) | \$ _____     | Unpaid Taxes .....   | \$ _____     |
| <i>(Describe in Section 3)</i>             |              | <i>(Describe in Section 5)</i>                                 |              |
| Automobile(s)- Present Value .....         | \$ _____     | Other liabilities .....  | \$ _____     |
| Other Personal Property .....              | \$ _____     | <i>(Describe in Section 6)</i>                                 |              |
| <i>(Describe in Section 4)</i>             |              | Total Liabilities .....  | \$ _____     |
| Other Assets .....                         | \$ _____     |  |              |
| Total Assets .....                         | \$ _____     | Net Worth <i>(Total assets minus total (liabilities))</i> .... | \$ _____     |

**SOURCE OF INCOME**

**CONTINGENT LIABILITIES**

|                             |   |
|-----------------------------|---|
| Salary .....                | An Endorser or Co-Maker .....           |
| Net Investment Income ..... | Legal Claims and Judgment .....         |
| Real Estate Income .....    | Provisions for Federal Income Tax ..... |
| Other Income .....          | Other Special Debt .....                |

| Section 1. Notes Payable to Bank and Others <i>(Use attachments if necessary. Each attachment must be identified as a part of this statement and signed)</i>  |                    |                 |                                 |                            |  |
|---|--------------------|-----------------|---------------------------------|----------------------------|--|
| Name and Address of Note holder(s)  | Original Balance   | Current Balance | Payment Amount                  | Frequency (Monthly etc.)   | How Secured or Endorsed Type of Collateral |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
| Section: 2. Stocks and Bonds <i>(Use attachments if necessary. Each attachment must be identified as a part of this statement and signed)</i>   |                    |                 |                                 |                            |  |
| Number of shares  | Name of securities | Cost            | Market Value Quotation/Exchange | Date of Quotation/Exchange | Total Value                                |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
| Section: 3. Real estate owned <i>(Use each parcel separately. Use attachments if necessary. Each attachment must be identified as a part this statement and signed)</i>   |                    |                 |                                 |                            |  |
|   | Property A         |                 | Property B                      |                            | Property C                                 |
| Type of property  |                    |                 |                                 |                            |  |
| Address   |                    |                 |                                 |                            |  |
| Date Purchased  |                    |                 |                                 |                            |  |
| Original Cost   |                    |                 |                                 |                            |  |
| Present Market Value  |                    |                 |                                 |                            |  |
| Name and Address of Mortgage Holder   |                    |                 |                                 |                            |  |
| Mortgage Account Number   |                    |                 |                                 |                            |  |
| Mortgage Balance  |                    |                 |                                 |                            |  |
| Amount of Payment per month/Year  |                    |                 |                                 |                            |  |
| Status of Mortgage  |                    |                 |                                 |                            |  |
| Section: 4. Other Personal Property and Assets <i>(Describe and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payments and if delinquent, describe delinquency)</i>  |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
| Section: 5. Unpaid Taxes <i>(Describe in detail, as to type, to whom payable, when due, amount and what property, if any a tax lien attaches)</i>   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
| Section: 6. Other liabilities <i>(Describe in details, Use attachments if necessary. Each attachment must be identified as a part of this statement and signed)</i>   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
| Section: 7. Life Insurance Held <i>(Give face amount and cash surrender value of policies, name of insurance company and beneficiaries)</i>   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
|   |                    |                 |                                 |                            |  |
| I authorize the Office of Certification at the New Hampshire Department of Transportation to verify the accuracy of the statements made in order to determine whether I meet the standards of economic disadvantage for participation in the DBE Program at the New Hampshire Department of Transportation. These statements are true and correct to the best of my belief. |                    |                 |                                 |                            |  |
| Signature:  | Title:             |                 | SSN:                            | Date:                      |  |

## **Attachment 7: Guidance Concerning Good Faith Efforts**

The following is a list of types of actions that the NHDOT will consider as part of the bidder's good faith efforts to obtain DBE participation in which the NHDOT has established a contract goal. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.

- 1.- Soliciting interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation.
- 2.- Breaking out contract work items into economically feasible units to facilitate DBE participation.
- 3.- Negotiating in good faith with interested DBEs. Evidence of such negotiation includes:
  - Names, addresses, and telephone numbers of DBEs that were considered; description of the information provided (plans and specifications for the work selected); dates of initial contact.
  - A description of the means by which firms were solicited (i.e., by telephone, e-mail, written notice, advertisement.)
  - A statement of why additional agreements with DBEs were not reached in order to meet the project goal.
  - A list of DBEs contacted but not contracted and the reasons for not entering a contract.
  - Efforts made to assist DBEs that need assistance in obtaining bonding, insurance, or lines of credit required by the contractor.
  - Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance services.

Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.



## **Attachment 8: NHDOT Standard Specifications for Road and Bridge Construction- Amendment to Section 103.06 – DBE Program Requirements.**

The Department is required to set an overall annual goal for DBE participation in Federal-aid projects. In order to fulfill that goal, Bidders during the bidding stage and the low Bidder after the opening of bids are encouraged to demonstrate best efforts to utilize minority subcontractors by soliciting bids from DBEs. These measures to obtain participation are known as race-neutral. Race-neutral DBE participation occurs when a DBE receives a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE contract goal, or even if there is a DBE contract goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g. prime contractor that uses a strict low bid system to award subcontracts). The Department will use contract goals as a race-conscious means of meeting any portion of the overall goal not achieved by use of race-neutral means.

A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purpose of this definition:

(1) “Socially and economically disadvantaged person” means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.

(2) “Owned and controlled” means a business which is:

- (a) a sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
- (b) a partnership, joint venture or limited liability company in which at least 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).
- (c) a corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with the percentage of ownership.

Disadvantaged participation in a joint venture must also be based on the sharing of real economic interest and must include proportionate control over management, capital, and earnings, as above.

If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of this program, a firm is considered a bona fide DBE.

A current listing of certified DBEs that may wish to participate in the highway construction program and the scope of work for which they are certified will be in the Proposal.

Credit will be given for the value described by a DBE performing as:

- A. A prime contractor; actual value of work performed by own forces.
- B. An approved subcontractor; 100% of expenditures committed.
- C. An owner-operator of construction equipment; 100% of expenditures committed.
- D. A manufacturer; 100% of expenditures committed.

The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Brokers and packagers shall not be regarded as manufacturers.

- E. A regular dealer; 60% of expenditures committed.

A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public.

Brokers and packagers shall not be regarded as regular dealers.

- F. A renter of construction equipment to a contractor; 20% of expenditures committed, with or without operator.

- G. A bona fide service provider; 100% of reasonable fees or commissions.

Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract.

Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.

- H. A trucking, hauling or delivery operation.

100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies.

100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator.

100% of reasonable fees or commissions the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.

I. Any combination of the above.

On all Federal-aid projects, the Contractor, during the life of the contract and on a semi-annual basis for the periods covering October 1st –March 31st and April 1st –September 30th shall submit a listing of all DBEs that were engaged in the Work, specifying item(s) of work performed by each DBE and the dollar amount paid for each item of work. Copies of canceled checks to the DBEs or statements from the DBEs together with supporting documentation (i.e., billings, invoices, etc., referenced to the contract) must be submitted as proof of payment. This documentation shall be submitted to the Department within 30 days of the reporting period end. Failure of the Contractor to submit this information may result in the Department withholding progress payments.

On Federal-aid projects which specify a DBE contract goal in the Information Report, Bidders during the bidding stage and the low Bidder after the opening of the bids, shall make every reasonable good faith effort to use certified disadvantaged business enterprises for work to be performed under the proposed Contract. In addition the following is also required on Federal-aid projects which specify a DBE contract goal.

Within 15 days after the bid opening date, the low Bidder shall file with the Bureau of Contracts a Disadvantaged Business Enterprise (DBE) Commitment Form provided by the Department. This form will list the DBE firms that will be used during the execution of the Work. The list shall show the name of the firm, the item/material/type of work involved and the dollar amount of work to be performed. The dollar total of each commitment shall be totaled and a percentage determined. In addition to the commitment form, letters of intent signed by principals of the low bidder and each DBE firm listed, shall be submitted prior to Department approval of the DBE commitment.

If the low bidder cannot provide the list and accepted letters of intent showing DBE participation in the Work, within the above time frame, the Contractor may request additional time through the Department's DBE Liaison Officer to comply or to provide written documentation of efforts to obtain participation. Acceptable documentation showing all good faith efforts made to obtain participation may be reason to waive the goal requirement of the project.

Failure to provide the required listing with the dollar participation total or acceptable documentation of good faith efforts to obtain DBE participation within 15 days after the bid opening date, or by another deadline established by the DBE Liaison Officer will be considered a

lack of responsiveness on the part of the low bidder. Rejection of the low bid under these circumstances will require the low bidder to surrender the Proposal Guaranty to the Department.

The submission and approval of the above forms does not constitute a formal subcontract as required in 108.01.

If for any reason during the progress of the Work the Contractor finds that DBEs included on the list are unable to perform the proposed work, the Contractor, with written release by the committed DBE or approval of the Department, may substitute other DBE firms for those named on the list.

If the Contractor is able to clearly document his inability to find qualified substitute firms to meet the project goal, the Contractor may request in writing a waiver of that goal.

If at any time during the life of the contract it is determined that the Contractor is not fulfilling the goal or commitment(s) and is not making a good faith effort to fulfill the DBE requirement, the Department may withhold progress payments.

Failure of the Contractor to meet the project goal or the specified DBE commitment(s), whichever is the lowest, will result in a reduction in Contract payment by an amount equal to the difference between the actual Contract dollars multiplied by the applicable commitment percentage and the dollar value of the work actually performed by the DBEs. If the Contractor's failure to meet the DBE goal or commitment(s) in the Contract is the result of circumstances clearly documented to be beyond the control of the Contractor, a written request for waiver of the goal or commitment(s) must be received. The Commissioner may waive, in whole or part, the reduction in contract payments specified herein.

Fulfillment of the goal percentage shall be determined by dividing the dollars committed to the DBEs by the actual contract dollars.

These requirements are in addition to all other Equal Employment Opportunity requirements on Federal-aid contracts.

**SPECIAL ATTENTION****DISADVANTAGED BUSINESS ENTERPRISE POLICY**

It shall be the policy of the New Hampshire Department of Transportation (NHDOT) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBE's) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT), Federal Highway Administration and as set forth below.

1. **Policy.** It is the policy of the United States Department of Transportation to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 Code of Federal Regulation (CFR) Part 26, to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.
2. **Disadvantaged Business Enterprise (DBE) Obligation.** The State and its Contractors agree to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 CFR Part 26, to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, *the contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NHDOT deems appropriate.* Each subcontract the prime contractor signs with a subcontractor must include the above assurance.
3. **Sanctions of Non-Compliance.** The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and, after notification of the United States Department of Transportation, may result in termination of this contract or such remedy as the State deems appropriate.

## **Attachment 9: Commercially Useful Function, CUF**

In order for DBE contractor payments to be counted toward DBE goals, the DBE contractors must perform a commercially useful function. It must be responsible for execution of the work of the contract and must carry out its responsibilities by actually performing, managing, and supervising the work involved, consistent with standard industry practices.

This means that:

- The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- The DBE must perform work commensurate with the amount of its contract;
- The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own work force;
- None of the DBE's work can be subcontracted back to the prime contractor, nor can the DBE employ the prime's, or other subcontractor's supervisors currently working on the project;
- The DBE's labor force must be separate and apart from that of the prime contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- The DBE owner must hold a Public Works license and any other professional or craft licenses required for the type of work he/she performs on the project;
- The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project; and

- The DBE trucking firm must be responsible for management and supervision of the entire trucking operation for which it is responsible. The following rules also apply to DBE trucking firms:

Must own and operate at least one fully licensed, insured and operational truck used on the contract. Owner/operators must have an agreement with the contractor or subcontractor that contains:

Leases must indicate that the DBE has exclusive use of and control over the truck, but does not preclude the leased truck from working for others during the term of the lease with consent of the DBE.

Leased trucks must display the name and identification number of the DBE.

## **Attachment 10: USDOT 49 Code of Federal Regulations Part 26**



## Attachment 10

**49 CFR**  
**Transportation**  
**Subtitle A**  
**Office of the Secretary of Transportation**

**PART 26 -- PARTICIPATION BY DISADVANTAGED BUSINESS  
ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL  
ASSISTANCE PROGRAMS**

THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED JANUARY 29, 2004

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**Subpart A -- General**

Sec.

- [26.1](#) What are the objectives of this part?
- [26.3](#) To whom does this part apply?
- [26.5](#) What do the terms used in this part mean?
- [26.7](#) What discriminatory actions are forbidden?
- [26.9](#) How does the Department issue guidance and interpretations under this part?
- [26.11](#) What records do recipients keep and report?
- [26.13](#) What assurances must recipients and contractors make?
- [26.15](#) How can recipients apply for exemptions or waivers?

**Subpart B -- Administrative Requirements for DBE Programs for Federally-Assisted Contracting**

- [26.21](#) Who must have a DBE program?
- [26.23](#) What is the requirement for a policy statement?
- [26.25](#) What is the requirement for a liaison officer?
- [26.27](#) What efforts must recipients make concerning DBE financial institutions?
- [26.29](#) What prompt payment mechanisms must recipients have?
- [26.31](#) What requirements pertain to the DBE directory?
- [26.33](#) What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- [26.35](#) What role do business development and mentor-protégé programs have in the DBE program?
- [26.37](#) What are a recipient's responsibilities for monitoring the performance of other program participants?

**Subpart C -- Goals, Good Faith Efforts, and Counting**

- [26.41](#) What is the role of the statutory 10 percent goal in this program?
- [26.43](#) Can recipients use set-asides or quotas as part of this program?
- [26.45](#) How do recipients set overall goals?

- [26.47](#) Can recipients be penalized for failing to meet overall goals?
- [26.49](#) How are overall goals established for transit vehicle manufacturers?
- [26.51](#) What means do recipients use to meet overall goals?
- [26.53](#) What are the good faith efforts procedures recipients follow in situations where there are contract goals?
- [26.55](#) How is DBE participation counted toward goals?

#### **Subpart D -- Certification Standards**

- [26.61](#) How are burdens of proof allocated in the certification process?
- [26.63](#) What rules govern group membership determinations?
- [26.65](#) What rules govern business size determinations?
- [26.67](#) What rules determine social and economic disadvantage?
- [26.69](#) What rules govern determinations of ownership?
- [26.71](#) What rules govern determinations concerning control?
- [26.73](#) What are other rules affecting certification?

#### **Subpart E -- Certification Procedures**

- [26.81](#) What are the requirements for Unified Certification Programs?
- [26.83](#) What procedures do recipients follow in making certification decisions?
- [26.84](#) How do recipients process applications submitted pursuant to the DOT/SBA MOU?
- [26.85](#) How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?
- [26.86](#) What rules govern recipients' denials of initial requests for certification?
- [26.87](#) What procedures does a recipient use to remove a DBE's eligibility?
- [26.89](#) What is the process for certification appeals to the Department of Transportation?
- [26.91](#) What actions do recipients take following DOT certification appeal decisions?

#### **Subpart F -- Compliance and Enforcement**

- [26.101](#) What compliance procedures apply to recipients?
- [26.103](#) What enforcement actions apply in FHWA and FTA programs?
- [26.105](#) What enforcement actions apply in FAA programs?
- [26.107](#) What enforcement actions apply to firms participating in the DBE program?
- [26.109](#) What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

**Appendix A to Part 26 -- Guidance Concerning Good Faith Efforts**

**Appendix B to Part 26 -- Uniform Report of DBE Awards or Commitments and Payments Form**

**Appendix C to Part 26 -- DBE Business Development Program Guidelines**

**Appendix D to Part 26 -- Mentor-Prote ge Program Guidelines**

**Appendix E to Part 26 -- Individual Determinations of Social and Economic Disadvantage**

**Appendix F to Part 26 -- Uniform Certification Application Form**

**Authority:** 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

**Source:** [64 FR 5126](#), Feb. 2, 1999, unless otherwise noted.

## **Subpart A -- General**

### **§26.1 What are the objectives of this part?**

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

### **§26.3 To whom does this part apply?**

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

## **26.5 What do the terms used in this part mean?**

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation* (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

*Compliance* means that a recipient has correctly implemented the requirements of this part.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Department* or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantaged business enterprise* or *DBE* means a for-profit small business concern --

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*DOT/SBA Memorandum of Understanding or MOU*, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

*Good faith efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

*Joint venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Operating Administration* or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

*Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Primary industry classification* means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual -- United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

*Primary recipient* means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust

Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

## **§26.7 What discriminatory actions are forbidden?**

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

## **§26.9 How does the Department issue guidance and interpretations under this part?**

(a) This part applies instead of subparts A and C through E of 49 CFR part 23 in effect prior to March 4, 1999. (See 49 CFR Parts 1 to 99, revised as of October 1, 1998.) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of this part and constitute the official position of the Department of Transportation.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid and binding, and constitute the



official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

## **§26.11 What records do recipients keep and report?**

(a) [Reserved]

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; *etc.*) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000]

### **§26.13 What assurances must recipients and contractors make?**

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

### **§26.15 How can recipients apply for exemptions or waivers?**

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE

community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that --

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in §26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

## **Subpart B -- Administrative Requirements for DBE Programs for Federally-Assisted Contracting**

### **§26.21 Who must have a DBE program?**

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

### **§26.23 What is the requirement for a policy statement?**

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

**§26.25 What is the requirement for a liaison officer?**

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

**26.27 What efforts must recipients make concerning DBE financial institutions?**

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

**§26.29 What prompt payment mechanisms must recipients have?**

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the

terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

### **§26.31 What requirements pertain to the DBE directory?**

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

### **§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?**

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

**§26.35 What role do business development and mentor-protégé programs have in the DBE program?**

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

**§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?**

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

### **Subpart C -- Goals, Good Faith Efforts, and Counting**

#### **§26.41 What is the role of the statutory 10 percent goal in this program?**

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

#### **§26.43 Can recipients use set-asides or quotas as part of this program?**

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

#### **§26.45 How do recipients set overall goals?**

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a



Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of

local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing

the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003]

#### **§26.47 Can recipients be penalized for failing to meet overall goals?**

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

#### **§26.49 How are overall goals established for transit vehicle manufacturers?**

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

#### **§26.51 What means do recipients use to meet overall goals?**

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

- (1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

(2)

**Example to Paragraph (f)(1):** Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

**Example to Paragraph (f)(2):** In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

**Example to Paragraph (f)(3):** Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

**Example to Paragraph (f)(4):** In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection

estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

**§26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?**

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and



(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section --

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

#### **§26.55 How is DBE participation counted toward goals?**

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

*Example to this paragraph (d)(5):* DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies,

articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(i)).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

## **Subpart D -- Certification Standards**

### **§26.61 How are burdens of proof allocated in the certification process?**

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (*see* §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

### **§26.63 What rules govern group membership determinations?**

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (*see* §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

#### **§26.65 What rules govern business size determinations?**

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$16.6 million. The Secretary adjusts this amount for inflation from time to time.

#### **§26.67 What rules determine social and economic disadvantage?**

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership

and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You



may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003]

## **§26.69 What rules govern determinations of ownership?**

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if --

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be --

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual --

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is --

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that --

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because --

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

#### **§26.71 What rules govern determinations concerning control?**

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the

power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners -- as distinct from the family as a whole -- control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

### **§26.73 What are other rules affecting certification?**

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.



(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm -- even a DBE firm -- cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

**Example 1:** Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

**Example 2:** Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

**Example 3:** Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

**Example 4:** Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

**Example 5:** Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

**Example 6:** The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (*see* Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the

firm to allow you to administer your program (*e.g.*, information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

## **Subpart E -- Certification Procedures**

### **§26.81 What are the requirements for Unified Certification Programs?**

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date

certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

### **§26.83 What procedures do recipients follow in making certification decisions?**

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer

oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:

(1) Certify the firm in reliance on the certification decision of the other recipient;

(2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or

(3) Require the applicant to go through your application process without regard to the action of the other recipient.

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of §26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

#### **§26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?**

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (*see* §26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

[68 FR 35555, June 16, 2003]

#### **§26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?**

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.

(b) If necessary, the SBA may make a written request to the recipient for additional materials (*e.g.*, the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

[68 FR 35555, June 16, 2003]

#### **§26.86 What rules govern recipients' denials of initial requests for certification?**

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for



the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

#### **§26.87 What procedures does a recipient use to remove a DBE's eligibility?**

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of

reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decision maker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

## **§26.89 What is the process for certification appeals to the Department of Transportation?**

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (*see* paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

**§26.91 What actions do recipients take following DOT certification appeal decisions?**

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

## **Subpart F -- Compliance and Enforcement**

### **§26.101 What compliance procedures apply to recipients?**

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

### **§26.103 What enforcement actions apply in FHWA and FTA programs?**

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.



(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

#### **§26.105 What enforcement actions apply in FAA programs?**

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

#### **§26.107 What enforcement actions apply to firms participating in the DBE program?**

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

**§26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?**

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the

procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

## **Appendix A to Part 26 -- Guidance Concerning Good Faith Efforts**

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the

contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

## Appendix B to Part 26 -- Uniform Report of DBE Awards or Commitments and Payments Form

### INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.

3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.

6. Name of the recipient.

7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.

8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.

8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.

8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.

8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.

8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(I) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.

12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.

12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.

12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.

12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.

12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.

13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).

14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

15. Name of the Authorized Representative preparing this form.

16. Signature of the Authorized Representative.

17. Phone number of the Authorized Representative.

18. Fax number of the Authorized Representative.

**\*\*Submit your completed report to your Regional or Division Office.**

| UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS  |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
|---|--|--|--|--|--|---|--|--|--|---------------------------------------|--|--------------------------------------|--|--|--|---|--|-------------------------------------|--|
| *Please refer to the instructions sheet for directions on filling out this form*  |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 1. Submitted to (check only one):   |  | <input type="checkbox"/> FHWA  |  | <input type="checkbox"/> FAA   |  | <input type="checkbox"/> FTA-Vendor Number      |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 2. AIP Numbers (FAA Recipients Only):   |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 3. Federal fiscal year in which reporting period falls:   |  | FY   |  | 4. Date This Report Submitted:   |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 5. Reporting Period   |  | <input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31) |  | <input type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30) |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 6. Name of Recipient:   |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 7. Annual DBE Goal:   |  | Race Conscious Goal  |  | Race Neutral Goal  |  | OVERALL Goal                                    |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
|   |  | %  |  | %  |  | %   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts awarded or committed during this reporting period) |  | A  |  | B  |  | C   |  | D                                      |  | E                                     |  | F                                    |  | G  |  | H                                       |  | I                                   |  |
| Total Dollars   |  | Total Number   |  | Total to DBEs (dollars)  |  | Total to DBEs (number)                          |  | Total to DBEs/Race Conscious (dollars) |  | Total to DBEs/Race Conscious (number) |  | Total to DBEs/Race Neutral (dollars) |  | Total to DBEs/Race Neutral (number)              |  | Total to DBEs (dollars)                 |  | Percentage of total dollars to DBEs |  |
| 8. Prime contracts awarded this period  |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 9. Subcontracts awarded/committed this period   |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| TOTAL   |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER  |  | A  |  | B  |  | C   |  | D                                      |  | E                                     |  | F                                    |  | G  |  | H                                       |  | I                                   |  |
|   |  | Black American   |  | Hispanic American  |  | Native American                                 |  | Subcont. Asian American                |  | Asian-Pacific American                |  | Non-Minority Women                   |  | Other (i.e., not of any other group listed here) |  | TOTALS (for this reporting period only) |  | Year-End TOTALS                     |  |
| 10. Total Number of Contracts (Prime and Sub)   |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 11. Total Dollar Value  |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD  |  | A  |  | B  |  | C   |  | D                                      |  | E                                     |  | F                                    |  | G  |  | H                                       |  | I                                   |  |
|   |  | Number of Prime Contracts Completed                                    |  | Total Dollar Value of Prime Contracts Completed                          |  | DBE Participation Needed to Meet Goal (Dollars) |  | Total DBE Participation (Dollars)      |  | Percentage of Total DBE Participation |  |                                      |  |  |  |   |  |                                     |  |
| 12. Race Conscious  |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 13. Race Neutral  |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 14. Totals  |  |  |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 15. Submitted by (Print Name of Authorized Representative)  |  | 16. Signature of Authorized Representative                             |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |
| 17. Phone Number  |  | 18. Fax Number   |  |  |  |   |  |  |  |                                       |  |                                      |  |  |  |   |  |                                     |  |

## **Appendix C to Part 26 -- DBE Business Development Program Guidelines**

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

(1) Profitability;

(2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of



notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

## **Appendix D to Part 26 -- Mentor-Prote ge Program Guidelines**

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-prote ge program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-prote ge relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the prote ge . The formal mentor-prote ge agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the prote ge through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the prote ge is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/prote ge agreement.

(C) DBEs involved in a mentor-prote ge agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A prote ge firm must be certified *before* it begins participation in a mentor-prote ge arrangement. If the recipient chooses to recognize mentor/prote ge agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/subcontractor mentor-prote ge agreement.

## **Appendix E to Part 26 -- Individual Determinations of Social and Economic Disadvantage**

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

### **SOCIAL DISADVANTAGE**

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities -- especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments) -- may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

## **ECONOMIC DISADVANTAGE**

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]